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Offshore Report | December 2021

Offshore:

firing on all cylinders, but ESG is
changing the narrative

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Offshore: firing on all cylinders

As the battle for legal talent intensifies, *Dominic Carman* examines how leading offshore law firms are managing record volumes of M&A, PE and fundraising



In international legal work, the offshore and onshore worlds are often deeply intertwined. Despite the sustained global impact of COVID-19, the world of deals has never been busier. According to Refinitiv data, the total value of pending and completed M&A deals in 2021 has reached \$3.6trn. During the first three quarters of 2021, M&A surged by 140 per cent to reach the \$2trn mark – and that was just in the US market. In Q3 alone, global M&A deal value hit \$1.07trn, eclipsing the previous high of Q4 2020. Meanwhile, the total value of private equity (PE) deals more than doubled to reach a record \$840bn, while the volume of PE deals increased by 66 per cent.

Since a fair amount of this frenetic activity has an offshore component, record deal activity onshore has inevitably led to record activity offshore. But leading offshore law firms have also been very busy across multiple practice areas, as evidenced by critiques from their global managing partners.

"It's been extraordinary," says Jonathan Rigby, Mourant's global managing partner. "I don't think any law firm managing partner, onshore or offshore, would have predicted how the last 18 months have turned out, in terms of client demand and revenue growth, given how things looked at the start of the pandemic. That's been a surprise, but a very welcome one. What's driving

▲ **Despite COVID-19, the world of deals has never been busier**

that? Economic conditions: low asset values and a low interest rate environment – the same factors that are driving growth in transactional practices onshore."

His heavyweight counterparts in the Channel Islands concur. "We've been busier than ever over the past 12 months; activity levels remain very high indeed and corporate has had a stellar year with all the M&A transactions and SPACs," says Edward Mackereth, global managing partner of Ogier. "Through 2021, we've been surprised at the extent of business activity, notwithstanding COVID," adds Alex Ohlsson, global managing partner of Carey Olsen. "Business flows have been significant – not just restructuring, but also new setups, IPOs, funds,

coupled with significant amounts of restructuring and litigation work, particularly emanating from Asia."

Conyers chairman Christian Luthi echoes the sentiment. "It has been another busy and productive year for Conyers across all of our offices," he says. "We've seen growth, even with the disruption of COVID, throughout our offices and practice groups." Collas Crill revenues have also continued to rise, notes group managing partner Jason Romer. "We're 17% up on where we were last year, costs are down and we continue to get busier," he says.

At Walkers, global managing partner, Ingrid Pierce develops the point. "We haven't been busier, much like everybody else," she says. "There's been a lot of M&A activity and we have worked on a lot of SPACs, although now we are working on more de-SPACs. After a small blip in 2020, fundraising is now firmly on the radar again, there have been some mega deals in the PE space and our clients are either launching new products, raising capital, restructuring or updating fund terms to make the products more attractive."

COVID affecting mental health

COVID's effect on offshore work was limited and short-term.

"Our experiences mirror what you read in the legal press," says Romer. "Everybody panicked that revenues were going to drop and the courts were going to close, but that never happened."

Ohlsson offers a geographic perspective. "Although the Channel Islands started the year with lockdown and have seen significant easing of measures, the Caribbean jurisdictions were a bit slower opening up," he says. "They were better able to shut their borders and run an effective regime limiting the spread of COVID, whereas the Channel Islands were less able to do



"We've seen growth, even with the disruption of COVID, throughout our offices and practice groups"
Christian Luthi, chairman, Conyers

that and opened up at a similar speed to the UK. Asia has been interesting because it had a series of fairly short-term lockdowns, then opened up, locked down again, and then re-opened. So, the management of our teams across the group has been challenging."

Most Caribbean jurisdictions certainly felt less direct impact. "Cayman was in such a great position with no cases for over a year," says Pierce. "Until recently, we were living in a lovely bubble, going about life as normal. Then we started to experience what the rest of the world has been going through. It was a bit of a shock to the system, but it was bound to happen so we just had to adjust."

Although the number of COVID cases and deaths have thankfully been lower in most offshore jurisdictions than in their onshore

counterparts, the mental health consequences have arguably been greater for some. "Our primary focus has been making sure that people's wellbeing is as safeguarded as it can be, when you have, for example, lawyers in Hong Kong who haven't been able to see family in New Zealand," says Mackereth. "That's been challenging. We've put our people first: that continues to be how we run the business, because if you don't have happy people, then you're not going to have a business."

Harneys new global managing partner Ross Munro outlines what his firm has done in response. "I'm not aware of any other offshore law firm that has a dedicated wellness resource, full time and available to the whole firm," he says. "People's mental health has taken a strain, whether it's from lockdown, not being able to travel, or not being able to visit family. It's been a tough year, going on two, for many people. We're making sure we provide as much support as we can. Increasing salaries traditionally helps and our internal surveys show that people appreciate it, but it's certainly not the only thing they want from the firm."

New funds raising billions

Beyond the record volumes of M&A and PE work keeping offshore lawyers busy, very high levels of new funds are now looking for a home. "There's been a real resurgence in fundraising, both in PE and in broader markets," notes Pierce. "In Cayman, we continue to experience significant growth, most notably in fund finance where transactions involve Cayman-based private equity, venture capital and hedge funds," says Luthi.

He notes that infrastructure funds are making significant acquisitions "at prices that represent a discount to pre-pandemic prices." Luthi also highlights "a continued shift to harnessing technology as a result of the pandemic, which remains significant especially in regions such as Latin America. This has led to major funds, such as SoftBank Corporation and General Atlantic, making substantial venture capital investments in tech startups. We're also seeing a number of new hedge fund launches after a few quiet years. Meanwhile in

"The ability to raise vast amounts of capital, almost remotely, by established PE houses, is continuing unabated"

Alex Ohlsson, global managing partner, Carey Olsen

BVI, private equity funds continue to invest in BVI companies, and the jurisdiction is often used to prepare and launch PE funds, particularly in the real estate space."

Rigby explains the US focus on Cayman: "Fund formation activity has been at record levels in the US market and that's reflected in the new fund formation numbers that we're seeing in Cayman. Based on statistics maintained by the SEC, more than 70% of non-US domiciled alternative investment funds that are managed by US registered investment advisors, are registered in the Cayman Islands. When the North American fund formation market is strong, then we benefit very directly."

Maples and Calder, whose funds & investment management practice is the largest in Cayman, recently appointed Caroline Heal as a partner in the team, which has also added 10 new associates since January in anticipation of future funds growth. Heal was previously a partner at Walkers. Michael Richardson, head of Maples Cayman funds & investment management practice, says, "Our team has grown considerably over the past year as a result of increasing demand for our services from global hedge fund and private equity fund clients."

A similar picture emerges in the Channel Islands. At Carey Olsen, which has one of the largest investment fund practices in the offshore world, Ohlsson notes: "There have been a number of significant fundraisings. The ability to raise vast amounts of capital, almost remotely, by established PE houses, is continuing unabated. Some of the biggest names are raising very large amounts of money. We acted on a Guernsey fund raise for Collier Capital – a \$9bn raise, very substantial. We also acted for Nordic Capital in

**OFFSHORE LAWYER HEADCOUNT BY FIRM/OFFICE (Partners/associates)**

	Carey Olsen	Collas Crill	Conyers	Harneys	Maples and Calder	Mourant	Ogier	Walkers
Bermuda	5/19	–	30/32	–	–	–	–	7/11
BVI	4/8	2/9	6/8	13/27	5/8	4/7	7/10	6/14
Cayman	8/16	6/16	12/18	10/16	53/80	11/30	19/47	34/84
Cyprus	–	–	–	5/12	–	–	–	–
Dubai	–	–	–	–	2/5	–	–	3/13
Dublin	–	–	–	–	41/69	–	–	20/49
Guernsey	17/53	15/24	–	–	–	11/37	14/30	9/20
Hong Kong	4/8	–	16/20	10/37	16/24	5/17	9/31	15/43
Jersey	20/77	12/21	–	–	6/4	26/60	22/61	11/33
London	3/26	–	0/4	5/6	9/15	1/16	–	9/21
Luxembourg	–	–	–	4/6	6/17	–	8/23	–
Shanghai	–	–	–	2/0	–	–	–	–
Singapore	2/11	–	2/2	2/0	5/4	–	–	8/14
Vancouver	–	–	–	1/0	–	–	–	–
TOTALS	63/218	35/70	66/84	52/104	143/226	58/167	79/202	122/302



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Jersey which raised \$1.2bn with their Evolution fund.”

There is also no shortage of capital being invested elsewhere. “We’re acting for many alternative lenders: private credit funds, hedge funds, which are actively lending, in addition to our traditional bank clients,” says Mackereth. “We’re also seeing an uptick in alternative funds – biotech, venture, crypto – the types of investment that will become commonplace in the future,” adds Romer.

“Chickens will come home to roost”

Capital has been very easy to get, notes Pierce, but there are questions about who is advancing the capital and under what terms. “There has been more non-bank lending,” she says. “In some structures, there was a lot of indulgence by banks and lenders during the pandemic to ameliorate its harsh effects. Eventually, those terms will crystallise: the chickens will come home to roost.”

At some stage, she suggests, those lenders will be calling in their credit. “Unfortunately, a number companies won’t survive: they will either have to find a way of restructuring – through a scheme or some other arrangement – or we’ll have more corporate insolvencies,” says Pierce. “That’s quite a significant risk, because many of these deals have time limitations on them. We’ve seen a lot of equity injections going into deals and those are obviously riskier for the lenders, or those injecting the capital, because they don’t get priority on a bankruptcy. Those deals have been well structured, but we’ll see a lot of insolvencies: we haven’t seen the peak yet.”

The great wave of immediate post-pandemic insolvencies that many had anticipated has not materialized – at least, not yet. “Corporates have had a lot of



“Restructuring will grow as inflation and interest rates rise now that government bailout schemes have ended

Edward Mackereth, global managing partner, Ogier

public and private money made available to them through the pandemic and as this support is withdrawn, demand for restructuring services may increase,” confirms Munro.

“Whether it’s restructuring or more general disputes, our team predicts that the increased activity in crypto will lead to disputes because there’s a lot of value at risk.”

Mackereth broadens the point. “Restructuring will grow as inflation and interest rates rise now that government bailout schemes have ended,” he says. “There will be a reckoning. We’re already seeing a lot of restructuring in the retail, casual dining, transportation, and commercial real estate sectors.

We’ve advised household names, such as Pizza Express and Virgin Atlantic.”

Alternative lenders are likely to be more active participants in future restructurings, he suggests. “Whereas banks have traditionally been quite reluctant to enforce security or trigger insolvency proceedings due to reputational risks, you may find that alternative lenders are less reluctant to do so. They have a greater risk appetite and less overt concern on reputational risk. The restructuring and insolvency process is used as just another part of the commercial equation.”

There is not as much restructuring work currently emanating from the UK as may have been anticipated, notes Ohlsson. “We’re now looking at people restructuring their business for the medium term: capital raises, bond issues, etc., from businesses which see a future post-COVID, with a limited number of insolvencies,” he says. “There is quite a lot of adjusting terms on existing financing transactions – extending duration, giving holidays in relation to amortisation or repayments effectively extending

the runway and often charging for doing so.”

SPACs: wider global appetite

The US-led SPAC phenomenon received a bucket of regulatory cold water from the SEC earlier this year which took out much of the heat from the market in New York. But some of that activity has instead been transferred elsewhere.

“The SPAC boom has been part of our growth story over the last 18 months,” says Rigby. “We’ve definitely seen a drop in the volume of new SPACs since the SEC intervention in accounting treatment but there are a lot of new Cayman SPACs out there. The volume of de-SPAC transactions has increased as they look for deals and we expect that to continue. That will be an important source of work for us. In the US, there’s been an increase in the number of shareholder lawsuits focusing on SPACs – in particular, breach of fiduciary duties, conflicts and disclosure issues regarding proposed mergers.

Mourant is also working on several deals advising the SPAC Board – and special committees – on corporate governance issues. “This is a really good example of how the offshore market has evolved over the last decade or so, with a significant increase in the scope and complexity of the advice being sought,” says Rigby.”

The SPAC trend is clearly continuing, according to Romer. “They’re just taking a bit longer to come to market than six to 12 months ago due to increased SEC scrutiny,” he says. Collas Crill recently advised on the Tristar Acquisition I Corp, focused on the telecoms industry, priced at an IPO of \$200m.

“The increase in SPACs has driven much of the recent M&A work in BVI,” notes Luthi. This includes two business combinations: the \$2bn



“ There’s still a function for reversing modest-sized companies into listed companies via SPACs

Ross Munro, global managing partner, Harneys

combination between Perimeter Solutions and EverArc in 2021 and the \$860 million combination of AP Wireless and Landscape Acquisition last year. He anticipates more activity from Europe, Latin America and Asia. “In terms of new SPACs, we believe the recent amendments to the UK listing rules will result in increased interest,” he says. “We have evidence of that happening already as our BVI and Cayman teams continue to advise on the launch of several listed London SPACs.”

Rigby adds: “We now sense a momentum shift from the US towards Asia and Europe for new SPAC launches. We’re working on a number of SPAC-related deals in Hong Kong and we understand that a number of SPACs are looking to list in Singapore, using Cayman companies.”

That momentum shift can be seen in new listings. In December, Carey Olsen advised Hambro Perks Acquisition Company Limited (HPAC), a Guernsey-incorporated SPAC, on its listing on the Main Market of the LSE – the first SPAC to do so since the Financial Conduct Authority reformed the Listing Rules in August.

“There seems to be a wider global appetite for SPACs,” confirms Mackereth. “We advised Disruptive Capital on a SPAC, which was listed on Euronext Amsterdam, out of Guernsey: an example of what’s happening in SPACs, less US, more diffused globally. Hong Kong is about to open up for further SPAC listings. We expect that to be a very hot market potentially. There’s still is a vast amount of capital looking for targets to acquire and take public via a merger. A lot of SPACs have been primed.

What will happen next, he suggests, is a wave of de-SPACing. “This will trigger transactional activity as you get SPAC marriages happening,” he says. “The increased regulation was absolutely the right thing to happen; likewise, that the US market cooled. With adequate

regulation, and in particular, the expertise on boards, it still is, potentially, a very good way for an up-and-coming company to get access to capital very quickly. With more experience in the markets, there will be a long future for SPACs, just as there's been a reasonably long past for them."

But Munro remains cautious. "There's still a function for reversing modest-sized companies into listed companies via SPACs," he says. "The massive \$2bn SPACs aren't going to become a regular feature, but raising money for modest-size businesses in the tens or hundreds of millions has been a regular feature of the equity markets for many years, and will continue to be so."

Looking ahead, the data arguably shows that sponsors and investors still seem to favour Cayman companies when structuring a SPAC, particularly if the target company is based outside the US. Most SPACs with non-US targets use Cayman incorporated companies as the SPAC for the de-SPAC transaction. By mid-2021, 289 Cayman companies were listed on the NASDAQ and 185 Cayman companies were listed on the NYSE.

"Massive war for talent"

To cope with the increased volume of work, more lawyers are needed. Although there are 1.33m of them in the US, according to the American Bar Association, there are still not enough (of sufficient calibre) to fill all the vacancies in elite law firms. Despite NQ salaries continuing to reach new stratospheric levels in New York, London and elsewhere, it was recently reported that the world's biggest law firms have started offering jobs to lawyers on the spot, without interview, to help meet demand for M&A and PE work. The ripples of this extraordinary lawyer shortage in the world's major financial hubs



“ The practicalities of moving abroad can be difficult and challenging.. However, we’ve seen many people interested in doing so
Ingrid Pierce, global managing partner, Walkers

are also being felt offshore.

"There's a massive war for talent in the legal industry, and very competitive salaries are being offered," says Munro. Certainly, several offshore firms are keen to emphasise that they are in expansion mode. "We're actively hiring in Cayman and Bermuda," says Ohlsson. A priority for Luthi is "hiring top talent in our core jurisdictions to support growth in strategic areas, such as Cayman and in Hong Kong litigation."

Rigby confirms the same applies at Mourant "The market for talent is highly competitive," he says. "We have to be more creative and to think hard about our employee proposition, particularly with the very significant switch to flexible working. Some things

that offshore offered historically – short commute, the ability to work from an attractive location – those are now often available onshore. We're having to rethink the offshore proposition: what is it that we can offer to the sorts of lawyers and other professionals we want to attract? We've spent a lot of time thinking about how we can be the very best employer that we can be. We want to continue to focus on making this a fantastic place to work with everything that entails – from greater diversity and inclusivity, narrowing gender pay gaps, increasingly flexible working and the introduction of employee sabbaticals."

In confirming the supply-demand challenge, Pierce outlines a pitch for lawyers to join Walkers. "The practicalities of moving abroad can be difficult and challenging," she says. "However, we've seen many people interested in doing so. Some people are getting tired of living under pandemic conditions in their home countries and just want a change. We are hiring in all of our practice groups, particularly in finance, funds, IDR (Insolvency & Dispute Resolution)

and across the spectrum. We can't really hire fast enough."

Munro offers an upbeat message for those thinking about offshore. "The great resignation that's talked about will be as much a benefit as a danger to the offshore industry," he says. "Because for every person who thinks, 'I've been stuck on a small island when I can't travel', there are plenty of others in cities thinking, 'I want to be on a small island'. The move offshore is less of a two-year tick box experience than it used to be: offshore law provides a fulfilling and challenging career. We are building on the effective recruitment programmes we have in place to hire talent within the relevant jurisdictions, making sure that anyone with the skills and dedication has a path to success."

In conclusion, Romer contextualises the current recruitment challenge. "There's a squeeze globally on professionals," he says. "Speaking to onshore firms, they're having a similar challenge. That's feeding through into the market right across all professional sectors. Restrictions on travel

“ Our islands have been incredibly resilient, and we’ve been very fortunate that life has been able to carry on

Jason Romer, global managing partner, Collas Crill

are exacerbating this issue. The counter to that, in the main, is that our islands have been incredibly resilient, and we've been very fortunate that life has been able to carry on."

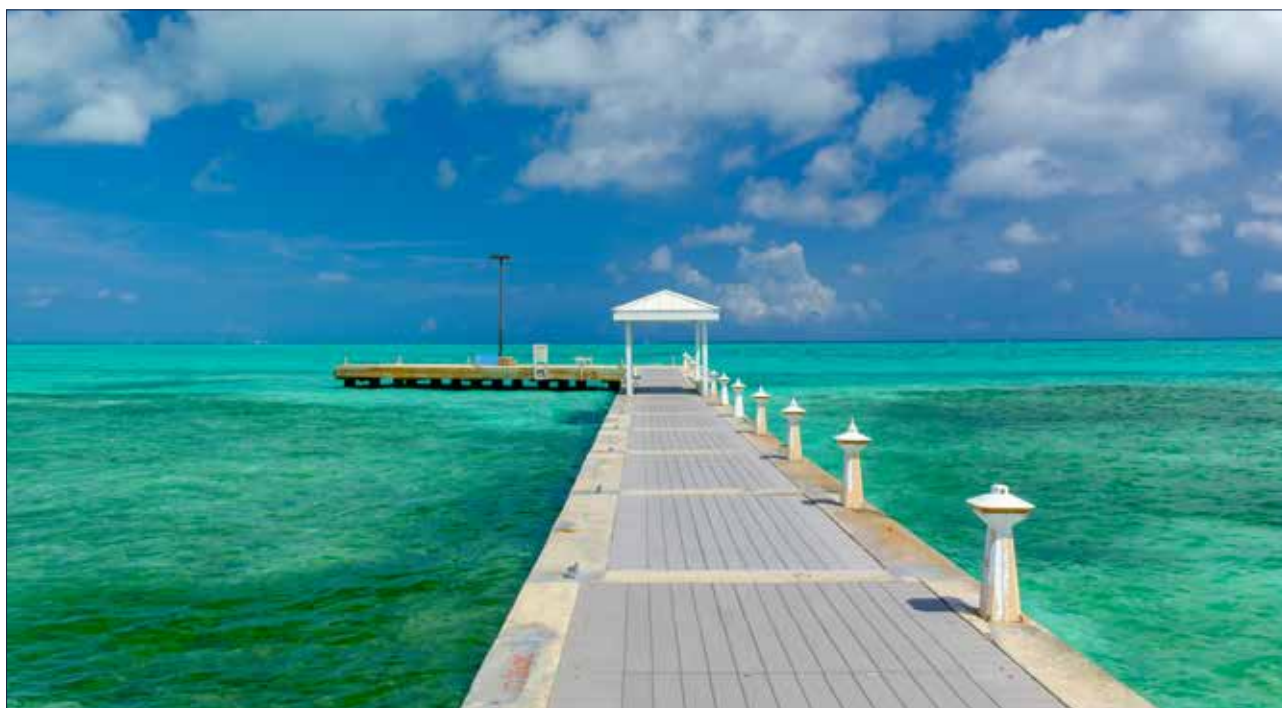
There are still huge advantages to working offshore in terms of work-life balance, he suggests, before offering his own pitch for talent. "At Collas Crill, we've moved to a much more flexible approach to work. We also have the benefit of a short commute if people do want to pop into the office. But there is a squeeze generally on attracting top talent. There are limited benefits if people want to move from one cookie-cutter law firm to another, but if they want to move to a nimble

and innovative law firm, that's our point of difference."

Set to enter his fourteenth year as Mourant's global managing partner, Rigby provides some perspective on how things have evolved since 2008: "It's a timeframe that spans the global financial crisis through to COVID. There are the obvious headwinds – macroeconomic events and geopolitics – which affect the legal services industry globally, but also specific challenges to our industry: economic substance requirements, increases in global financial services regulation, and demands for more transparency and reporting, all of which we welcome. The offshore sector's resilience and ability to continue to adapt and evolve and absorb these changes really stands out.

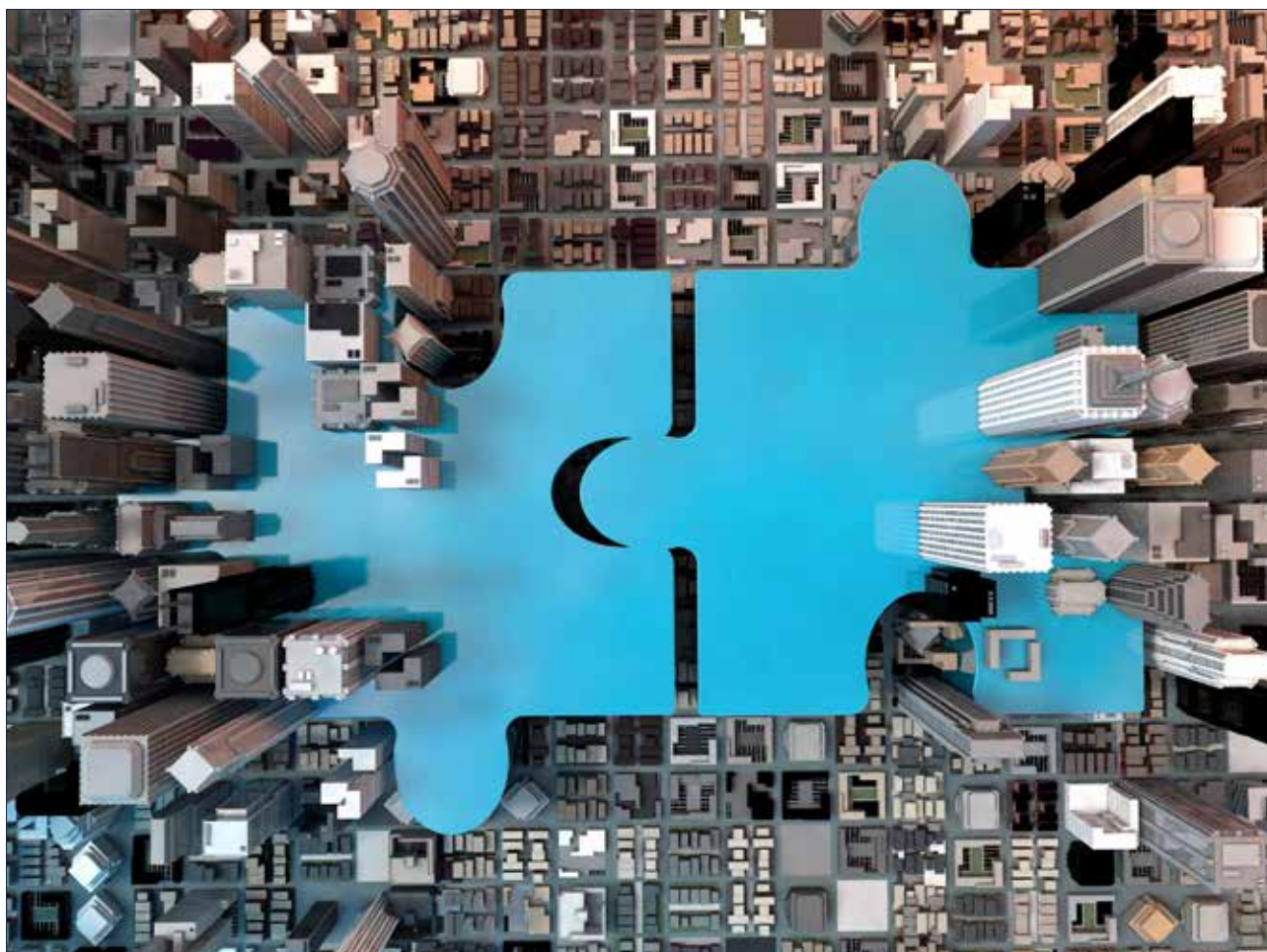
"When I look back to 2008, I don't think I'd have predicted the extent of the growth. Look at the offshore industry: it's bigger, more sophisticated and complex, and there's more value added through what we do offshore than was the case previously. We throw up some very challenging and stimulating work and it's a more interesting place to work as a result."

Sponsors and investors still seem to favour Cayman companies when structuring a SPAC ▼



Deals dominate

Offshore firms are benefiting from frenetic levels of onshore activity. So which deals stand out?



The deal momentum of the offshore market, which picked up sharply during the latter half of 2020, continued without pause throughout 2021 generating a significant volume of M&A, IPOs, and SPAC listings. As the COVID lockdowns were eased onshore and vaccine roll-outs became more widespread, global M&A activity, and related debt financing, continued to forge ahead reaching record levels. Fuelled by very low interest rates and stratospherically high levels

of unallocated capital, global private equity dry powder hit an all-time high of \$1.9trn in January, leading to a surge in buyout deal activity during the year. Inevitably, offshore activity saw a near parallel increase in the various types of deal activity.

Covering a wide range of sectors and markets across a broad sweep of jurisdictions, the breadth and scale of deals outlined below serve as a representative sample of the largest and most interesting advisory work undertaken this

▲ **This year has seen a significant volume of M&A, IPOs and SPAC listings**

year by the leading offshore law firms. Demonstrating the offshore markets' infinite capacity to innovate, several are a genuine first of their kind. Most investors and lenders are in still in the early stages of their ESG journey, but the appearance of ESG financing, recycling and marine conservation in some of last year's most significant deals shows the direction of travel. As sustainable investing gathers pace, it is likely to have a significant impact on deals in the year ahead.

MAJOR OFFSHORE DEALS OF 2021

CAREY OLSEN

CAYMAN: Carey Olsen advised the online used car platform Kavak, Mexico's first unicorn and the second-most valuable start-up in Latin America, on two funding rounds - Series D (\$485m) and Series E (\$700m) - which now values the company at \$8.7bn.

GUERNSEY: Carey Olsen acted for Hambro Perks Acquisition Company Limited (HPAC), a Guernsey-incorporated SPAC, on its listing on the Main Market of the LSE – the first SPAC to do so since new rules came into force in August. Tech-focused investment firm Hambro Perks raised £150m through its IPO.

JERSEY: Carey Olsen advised RBS International on Triton's €1.455bn ESG-linked financing facility as part of their commitment to ensuring responsible and sustainable investment. The facility structure is intended to be replicated across future Triton funds, providing a common set of strategic targets that will catalyse the delivery of its overall sustainability goals and objectives.

COLLAS CRILL

BVI: Collas Crill advised Mail RU, Russia's largest internet business and e-commerce business, on a \$200m equity fundraising of GDRs and \$400m debt offering of senior unsecured convertible bonds due 2025 – one of the largest security issues by a BVI company in 2021.

GUERNSEY: Collas Crill advised Jacobi Investment Funds PCC Limited on the approval process for Jacobi Bitcoin ETF, the world's first tier one Bitcoin ETF (exchange traded fund).

GUERNSEY: Collas Crill advised Curaleaf on its acquisition of EMMAC Life Sciences Limited at an implied post money valuation of \$413m. EMMAC is Europe's largest vertically integrated



“ Through 2021, we've been surprised at the extent of business activity, notwithstanding COVID

Alex Ohlsson, global managing partner, Carey Olsen

independent medicinal cannabis company.

CONYERS

BVI: Conyers acted for Fix Price Group Ltd (Fix Price) on its \$2bn IPO on the LSE. The listing results in Fix Price becoming the most valuable publicly listed BVI company with a market capitalisation of c.\$8.3bn. The IPO is the largest ever listing for a Russian retailer and the largest Russian IPO since 2014.

BVI: Conyers advised SK Capital in connection with a business combination of its portfolio company Perimeter Solutions, a US-based firefighting products and lubricant additive maker, and EverArc Holdings Limited, a London-listed acquisition vehicle. The \$2bn transaction is one of the largest ever business combinations involving a BVI SPAC.

HONG KONG: Conyers acted for Faraday Future, the electric

vehicle company based in Los Angeles, on its \$1bn merger (a reverse merger) with Property Solutions Acquisition Corp, a SPAC. The combined company, Faraday Future Intelligent Electric Inc., was listed on the NASDAQ in July.

HARNEYS

CAYMAN: Harneys advised XPeng Inc and Chaoju Eye Care Holdings Limited's combined HK\$15.36bn (US\$2bn) IPOs on the HKSE. In a rare dual primary listing in Hong Kong, adopting weighed voting right structure, they raised c.HK\$14bn in gross proceeds (before the exercise of the over-allotment options) and HK\$1.36bn (US\$177m) in net proceeds, respectively.

CAYMAN: Harneys acted for Latin American softgel maker Procaps Group, a leading integrated international healthcare and pharmaceutical company on its \$1.1bn business combination with Nasdaq listed Union Acquisition Corp. II, a Cayman incorporated SPAC.

CAYMAN: Harneys advised offshore investment and asset management platform, Ping An Overseas Holdings, in relation to its \$680m private credit secondaries transaction - globally, the largest private credit secondaries transaction to date. ►

MOURANT**CAYMAN /HONG KONG:**

Mourant acted for MaiCapital, a fund manager licensed by the Hong Kong SFC, on the launch of a tokenized Bitcoin-themed quantitative fund, which invests in a range of asset classes, including Bitcoin and Bitcoin-related derivative products and the formation of a related SPV. It is one of the first actively managed hedge funds in Asia to be tokenized, and the first tokenized fund in Asia to feature cryptocurrencies as an asset class.

JERSEY: Mourant acted for BorgWarner Inc. in relation to its acquisition of Delphi Technologies PLC, a Jersey company listed on the NYSE. The all-stock transaction valued Delphi at around \$3.3bn and combines two major auto-parts makers. This is believed to be the first time a US listed target has been acquired using a Jersey scheme of arrangement.

JERSEY: Mourant advised private investment house and longstanding client, Ardian, on its eighth-generation secondaries fund. The world's largest secondaries platform attracted \$19bn of commitments from investors globally, while the fund attracted 275 investors from nearly 40 countries.

MAPLES

CAYMAN/IRELAND: Maples advised Stonepeak, an alternative investment firm specialising in infrastructure and real assets, on SALT 2021-1, its inaugural aircraft loan securitisation transaction (issue \$893.5m of notes): the aviation sector's first such securitisation.

CAYMAN: Maples advised the Cayman Islands Government on a new 25-year PPP waste management contract: Cayman's Energy and Recycling Centre, transforming waste management with new energy recovery and recycling facilities by diverting up to 95% of waste from being



landfilled and contributing 8.5MW of renewable energy to the grid.

CAYMAN: Maples advised Platinum Securities Cayman SPC Limited on its issuance of Secured Packaged Pass-Through Notes that form part of the largest ever executed Blue Bond for marine conservation. This provides Belize with private capital to refinance a portion of its public debt in return for accelerating its marine conservation commitments.

CAYMAN: Maples acted for Blackstone Group on its acquisition of a life business, Allstate Life Insurance Company (ALIC), from Allstate Corp for \$2.8bn as the private equity firm continues to expand its foothold in the insurance sector.

OGIER

BVI: Ogier's BVI team in Europe advised on Fix Price's \$2bn IPO - the largest ever listing for a Russian retailer and also the biggest Russian IPO for more than a decade.

BVI: Ogier advised NASDAQ-listed Kismet on its \$1.9bn merger with Nexters: one of the biggest BVI SPAC business combinations since 2012 and one of the biggest BVI M&A deals of any type in recent years. Nexters is one of the top five independent mobile game companies in Europe. Kismet was also advised by Skadden, Arps,

▲ Ogier advised conservation NGO WWF-Hong Kong

Slate, Meagher & Flom as M&A counsel, and Greenberg Traurig as US securities law advisor. Nexters was advised by Latham & Watkins.

HONG KONG: Ogier advised conservation NGO WWF-Hong Kong on the restructuring and updating of the fund legal documents for The Climate Impact Asia Fund SP, one of the first climate impact funds dedicated to the Asia Pacific region. The fund is managed by investment group Milltrust International in partnership with WWF-Hong Kong.

GUERNSEY: Ogier acted for Disruptive Capital on its £125m Euronext Amsterdam listed SPAC: the first SPAC on Euronext Amsterdam to be listed and traded in GBP (pounds sterling).

WALKERS

CAYMAN: Walkers acted for Reckitt Benckiser Group plc (Reckitt) on the sale of its Infant Formula and Child Nutrition business in China to Primavera Capital Group for \$2.2bn. Walkers was instructed by Slaughter and May.

HONG KONG: Walkers advised MPower Partners on Japan's first ESG focused global venture capital fund, which plans to leverage its extensive global expertise and network to support ESG integration, business scaling and global expansion as well as to facilitate overseas start-ups' entry into Japan by providing tech-enabled solutions.

JERSEY: Walkers' advised Babylon, a digital-first value-based healthcare company, on its \$4.2bn merger with Alkuri Global Acquisition Corp (a SPAC) and its NYSE Listing.

LONDON: Walkers acted as Cayman counsel to Group 11, a Silicon Valley-based venture capital firm, on its ground-breaking \$200m VC Fund launch and listing: the first venture capital fund to join trading on the TASE UP electronic trading platform.

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Governance underpinning purpose

By Robert Moore, Director – UK, Jersey Finance



The challenges arising from the 2020 global pandemic have undoubtedly permeated throughout all businesses, causing many to reflect on the how and why of what they do. For family offices, this introspection has accelerated thinking around best practice in the sustainable finance and ESG space by analysing how attitudes are changing and the role governance plays in helping families meet their investment goals.

Today, with sustainability in both business and investment strategies higher on the agenda than ever, the importance of effective governance around key elements such as succession planning and formalised family values is being seen in a far

broader sense – that of bridging the founding and future visions of the family to safeguard a legacy while also impacting positively on the world.

As such jurisdictions, such as Jersey, with a strong reputation in governance as well as responsiveness to increasingly complex international regulatory and transparency initiatives, will be a clear choice for family offices.

Remaining at the forefront of such an evolving, dynamic private wealth sector will also be imperative and is one reason why Jersey Finance launched its own sustainable finance strategy and vision, aimed at making Jersey the leading international finance centre for sustainable finance in the markets it operates in by 2030.

▲ International Finance Centre, St Helier, Jersey: jurisdictions such as Jersey will be a clear choice for family offices

A robust framework

Aside from setting down practical rules, governance programmes are instrumental in supporting meaningful action in the wider world based on a family's most deeply held values. Creating a robust framework and articulating these values, however, can be challenging.

Recently, Wealthbriefing, supported by Jersey Finance, looked at sustainable family governance models in an evolving environment. The report, titled *Virtuous Circles*, found a clear majority (61%) of advisers believe that enterprising families should have a formal governance programme in place by the time they have £50 million in assets with a substantial 28% putting the

threshold at a far lower £20 million.

This asset level is certainly important but it's the complexity that comes with it that often acts as the real trigger. Conflict such as varying levels of involvement between the different generations, particularly regarding distributions and dividends, can create tension and advisers may need to explore whether it's best to remain as a single group at all.

That said, if joint ownership remains the best approach, a formal governance programme will be instrumental to maintaining a sense of shared purpose.

Succession

The Wealthbriefing research highlighted that 74% of advisers identified a formal business succession plan as vital to effective governance. Yet despite these findings, globally only around 30% of enterprising families have formal succession plans in place (Global Family Business Survey 2021, PwC; STEP Global Family Business Survey, 2019).

Formalising how the management and ownership of a family's business empire and other assets should be transitioned is crucial in avoiding the confusion and conflict that can destroy not only financial value but family relations.

For this to be successful, clear values must be set down as part of governance efforts. And, in fact, recent research by PwC highlighted that succession plans were significantly more likely to be in place (41%) if family values had been formally set down (PwC, Global Family Business Survey 2021).

This can be easier said than done, however, with millennials and Gen Z typically focussed on climate change versus baby boomers leaning towards safeguarding investments and businesses.

“ Emerging from the pandemic, the question of which jurisdiction to choose has taken on further relevance

But these needn't be mutually exclusive; sustainable equity funds and sustainable taxable bond funds outperformed their non-ESG peer equivalents by a median total return of 4.3% and 0.9% respectively in 2020 (Sustainable Funds Outperform Peers during 2020 Coronavirus, Morgan Stanley Institute for Sustainable Investing, 2021). Plus having a variety of voices and attitudes within wealthy families can be a force for good by offering a more comprehensive approach to ESG.

Great wealth taking on greater responsibility

The rise of impact investing has been stellar in recent years; in 2020 the market size of impact investing stood at US\$715 billion, rising an incredible 42% from US\$502 billion in 2018 (Global Impact Investing Network).

As a long-term trend, advisers will need to ensure they are at the top of their game in sustainable finance if they are to remain relevant to their clients and, from a governance perspective, when assessing performance, the focus will need to shift to where a company is going rather than its financial results for last year.

Such a future focussed approach is also transformational to the wealth management sector at large with UHNW families able to take a longer-term view without experiencing the return constraints in the same way as other investors. This, along with families' time-honoured dedication to philanthropy, allows their ESG and impact investing

strategies to play a clear role in solving global problems.

Making the right choice

Emerging from the pandemic, the question of which jurisdiction to choose has taken on further relevance. Proximity to business interests, family lifestyle and the drive to cut down on airmiles have risen in significance.

As such, technological ecosystems and the cybersecurity implications of operating in a particular jurisdiction are now coming to the fore. This leaning towards technological and digital infrastructure will put jurisdictions like Jersey, which now has the fastest broadband speed in the world, in good stead.

Depth of legal and ancillary expertise as well as a high-quality regulatory regime able to offer a range of asset holding structures, from foundations and partnerships to Family Investment Companies, will also remain key requirements for UHNW families.

But, while there are certainly best practices there are arguably no definitive answers; there are as many ways of approaching governance and ESG strategies as there are wealthy families themselves, and it is in helping families pick a path that expert advisers, including the top tier legal community in Jersey, will really come into their own.

► Read our *Virtuous Circles* research report [here](#).

For more information contact:

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‘People keep arguing’

Disputes continue to thrive across the offshore world. What are they arguing about?



When the economy's going well, people argue about profits being made, and when it's going down, they argue about who caused who losses," says Stephen Baker, senior partner of Baker & Partners, a specialist offshore disputes firm headquartered in Jersey. "People keep arguing and I don't see human nature changing," he adds.

In October 2020, Baker opened a Cayman office which has recently expanded further to cope with demand. "We've been very busy," says Baker. "In Cayman, it's insolvency driven. The idea of Cayman is to replicate what we've been doing in Jersey: having a litigation-only, conflict-free offering, in both the real conflict sense and the soft conflict sense."

Section 238

Every Cayman lawyer is very familiar with s.238 of the

Cayman Companies Act: it provides that following a merger or consolidation, a dissenting shareholder is entitled to a determination by the Grand Court of the "fair value" of its shares, together with a fair rate of interest. A significant number of petitions have been generated, most of which involve Cayman companies listed on US stock exchanges with substantial operations in China. According to its new global managing partner, Ross Munro, s.238 actions continue to be "a good source of instructions" for Harneys. "The level of sophistication of the valuation dispute process and the quality of judgments being produced has been widely lauded," he says. Ingrid Pierce, his counterpart at Walkers, argues that minority shareholders disputes over trying to get fair value arise "because valuations can be so difficult in this market. There've been so many of these

▲ **Dispute resolution continues to be a good source of work for offshore firms**

Cayman petitions, but we've also seen dissenting shareholder actions in the BVI."

At Collas Crill, group managing partner Jason Romer adds: "Over 50% of our revenue is from litigation, which isn't typical for most other big offshore firms. This type of work doesn't slow down – it's perennial and dates back to the financial crash in 2008." He explains: "In our Cayman practice, in particular, it's very busy. We've seen huge growth in private client trust litigation, insolvency, and the s.238 practice, with businesses taking themselves off the stock exchange and trying to buy out shareholders at reduced rates, which is leading to disputes around fair value." Edward Mackereth, global managing partner at Ogier, concurs: "Disputed valuation cases in connection with squeeze-out of majority shareholders for Cayman companies, s.238s, are extremely busy and continue to expand." ►



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Walkers is a leading international law firm providing legal, corporate, corporate governance, regulatory compliance and fiduciary services to global corporations, financial institutions, capital markets participants, investment fund managers and ultra high net worth individuals. We are experienced in all types of international and cross-border transactions, covering a broad range of sectors, and advising on the laws of Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Ireland and Jersey from our global network of offices.



Alex Ohlsson, Carey Olsen's global managing partner, also points to increased s.238 work. "There's often a dispute that arises in relation to valuation: one group of shareholders is unhappy with the valuation ascribed to it by another group: they seek to challenge the basis of the transaction," he says. "Normally, they relate to a Cayman, BVI or Bermuda company," he says. "But ultimately, the dispute will be heard before a Cayman, BVI or Bermuda court. The conduct of that dispute will be partly in Asia, particularly the preliminary aspects, and partly in the jurisdiction where it's going to be heard, as one gets closer to appearing before a court."

Z Trusts litigation

Elsewhere, Pierce notes that Guernsey has seen more trust disputes. "It's indicative of Channel Islands work: administrative applications and momentous decisions," she says. "Jersey has many trust matters; some involve philanthropic cases – questions about termination of trusts and general trust litigation." Shareholder litigation has also been more active in Jersey than previously, she notes. A prominent example is the Z Trusts litigation – probably the single most important and significant trust case currently before the Jersey courts and, arguably, one of the most important trust cases in the common law world. Since 2015, the Jersey courts have been developing, from scratch, an insolvency regime for trusts, which is of considerable interest to all common law trust jurisdictions with potentially far-reaching consequences. Both Collas Crill and Mourant are involved in the long-running dispute.

In Bermuda, Christian Luthi, chairman of Conyers, points to a marked increase in civil



“ Over 50% of our revenue is from litigation, which isn't typical for most other big offshore firms. This type of work doesn't slow down

Jason Romer, group managing partner, Collas Crill

commercial and trust litigation, as well as insolvency litigation. He sees new opportunities in the BVI "as the funding market for disputes is maturing, and there is more of a willingness now to pursue those disputes." In Cayman, he adds: "There has been an increase in work related to corporate insolvency and contentious debt restructuring – contested winding-up petitions, disputed debts, jurisdictional skirmishes, particularly regarding Asian structures incorporated in Cayman. There are also corporate governance and shareholder disputes, such as those involving just and equitable winding-up petitions and alternative remedies for minority shareholders."

Meanwhile in Hong Kong, Luthi notes there is more disputes activity over "the failure of

substantial PRC businesses in particular sectors which are targeted for intervention – currently the most prominent being real estate developers – to meet repayment obligations to overseas lenders with insolvencies and restructuring resulting from these developments." Mourant's global managing partner, Jonathan Rigby, also points to restructuring. "Our Hong Kong, BVI and Cayman teams have been working together very successfully on some very large restructurings," he says.

Evergrande: more insolvencies and restructurings

Evergrande, the struggling Chinese property developer, continues to cast a shadow over both the Hong Kong and Chinese property markets. Once China's biggest property developer, with more than 1,300 real estate projects and \$300bn of liabilities, it is emblematic of China's property crisis that has already brought down many smaller developers. After persistent indications that Evergrande is on the verge of a potential default on debt repayments, it could yet be forced into a full-blown restructuring. "It's very early days: some are concerned that there might be systemic contagion, but everybody's watching closely to see what happens," says Munro.

"Evergrande's issues may or may not prove to be systemic," adds Rigby. "But they are already throwing off a lot of work. The Hong Kong office is involved in a number of high-profile schemes, including one which draws together our Hong Kong litigation and corporate teams. That really is a sweet spot for us: where our corporate restructuring and contentious restructuring partners work together. Will the Evergrande fallout turn out to be systemic? It may do, in which case we'll all need to gear up very significantly. But even if it isn't, it's of such a magnitude, that it's already generating, and it's likely to continue to generate a significant volume of work for offshore lawyers."

Although the volume and value of disputes is less straightforward to quantify in the same way as M&A deals, it is clear that, notwithstanding the post-COVID economic recovery, disputes are equally buoyant across many offshore jurisdictions. The spectrum of disputes outlined below provides ample evidence to that effect.

DISPUTES, INSOLVENCY & RESTRUCTURING HIGHLIGHTS

CAREY OLSEN

CAYMAN: Carey Olsen is acting for an ad hoc group of bondholders in the filing of a scheme of arrangement in the ongoing restructuring of China's Luckin Coffee Inc. The bondholders represent over 80% of the value of the \$460m of convertible bonds, the senior class of Luckin's debt.

CAYMAN: Carey Olsen acted for the successful petitioner in a case before Cayman's Grand Court in which a Cayman mutual fund, Rasia, failed in its attempt to strike out a BVI creditor's winding-up petition against it.

CAYMAN: Carey Olsen continues to act as offshore



“ Our Hong Kong, BVI and Cayman teams have been working together very successfully on some very large restructurings

Jonathan Rigby, global managing partner, Mourant

counsel to PwC as Cayman court-appointed joint liquidators of UAE private equity firm, Abraaj Holdings. After two creditors – a Kuwaiti pension fund and a US asset management firm – sought to wind it up on the back of investor accusations that the Abraaj Group had misused around \$200m allocated to a healthcare fund it manages, Abraaj Holdings has since moved into official liquidation.

COLLAS CRILL

CAYMAN: Collas Crill is advising the joint liquidators of the \$1.1bn Cayman hedge fund Platinum including in relation to litigation funding to finance litigation against former management and auditors – one of the largest and most complex liquidations to have taken place in Cayman in recent years.

CAYMAN: Collas Crill is advising longstanding client

WeDoctor, a Hong Kong digital healthcare company valued at \$6.8bn, in pre-IPO restructuring of various Cayman holding companies to simplify and clean up the structure in advance of a listing on the HKSE.

JERSEY: In the Z Trust litigation, Collas Crill is acting for the appellant in the Privy Council in a dispute concerning the priority of claims in a debt claim worth £230m – anticipated to be the leading case on insolvent trusts which will shape the industry's practice regarding the transfer of trusteeships and situations of insolvency in trusts.

CONYERS

BERMUDA: Conyers represented the successful respondent trustees in the recent Bermuda Court of Appeal decision in Wang, Ven Jiao v Grand View PTC & Ors. The Court refused leave to appeal against Kawaley AJ's refusal to permit the applicant to rely on otherwise privileged hearsay evidence.

BERMUDA: Conyers advised Bermuda exempted company Valaris Limited, a leader in offshore drilling services, in connection with its financial restructuring and emergence from Chapter 11 bankruptcy. The Valaris Group's Plan of Reorganization eliminated \$7.1bn

of debt and secured a \$520m capital injection by issuing \$550m of new secured notes maturing in 2028.

BERMUDA/BVI: Conyers advised GCL New Energy, which was listed on the Main Board of the HKSE, on its scheme of arrangement to effect a debt restructuring by way of cancellation of the existing notes and all guarantees and security in consideration for the receipt of cash and new notes of GCL New Energy.

MOURANT

CAYMAN/ASIA: Maurant was instructed, initially alongside Clifford Chance's restructuring team, to act for the syndicate of senior secured lenders in the proposed restructuring of the existing \$305m loan which was advanced in late 2017 to the Bain Capital-controlled Trans Maldivian Airlines (TMA), the world's largest sea plane operator. Maurant is now acting for the receivers, assisting them in rehabilitation and stabilisation of the business.

CAYMAN: Maurant is advising Tailored Brands, the largest retailer of formal menswear in North America with over 1,400 stores and around 20,000 employees, on its Chapter 11 restructuring. Maurant advised in relation to a Cayman subsidiary which sources clothing for the group from suppliers in Asia and the South Pacific.

JERSEY: Maurant has been advising on the Z Trusts litigation which went to the Judicial Committee of the Privy Council (JCPC) in June 2021 – one of the most important common law trust cases. There will be a ruling on the question of the ranking and order of priority of creditors of an insolvent trust.

OGIER

CAYMAN: Ogier obtained the first-ever court-ordered reformation of a STAR Trust. The variation was sought on

the basis of obsolescence in the context of a multi-billion-dollar trust involving a complex trust restructuring. The Court's written judgment will be an important precedent for the jurisdiction.

GUERNSEY: Ogier is acting for the administration managers of Providence Investment Funds PCC Limited in its high-profile claim against PwC. The case continues at the evidence stage, with witness statements and expert reports due imminently. The trial date is set for May 2022.

JERSEY: Ogier represents BDO LLP in an ongoing £30-£50m matter involving complex trust and company law issues, including whether a purportedly charitable Jersey law trust was intentionally misused to conceal the true ownership of assets in a sham arrangement, and complex pleas of fraud and conflicts of laws across three jurisdictions.

HARNEYS

CAYMAN: Harneys advised the Joint Official Liquidators of the Saad Investments Finance Company (SIFCO 5). The AHAB v Al-Sanea & Ors is a high-profile, much-publicised and long running \$9.2bn claim involving allegations of fraud arising from one of the largest corporate collapses of the financial crisis.

BVI: Harneys advised Convoy Collateral Limited (CCL), a BVI subsidiary of a large HKSE-listed financial services provider, in a high-profile case in the BVI that was before the Privy Council in February 2021. In a historic first, the seven-justice bench included the President; Deputy President and the Master of the Rolls.

CAYMAN: Harneys acts for Luckin Coffee in a restructuring in which the company seeks to compromise its debts and liabilities by instituting two parallel schemes of arrangement which are not interdependent on one another: the first time that such a process has been attempted in Cayman.

The restructuring relates to an investment holding company of the group which provides coffee and other products via several thousand outlets across the PRC.

MAPLES

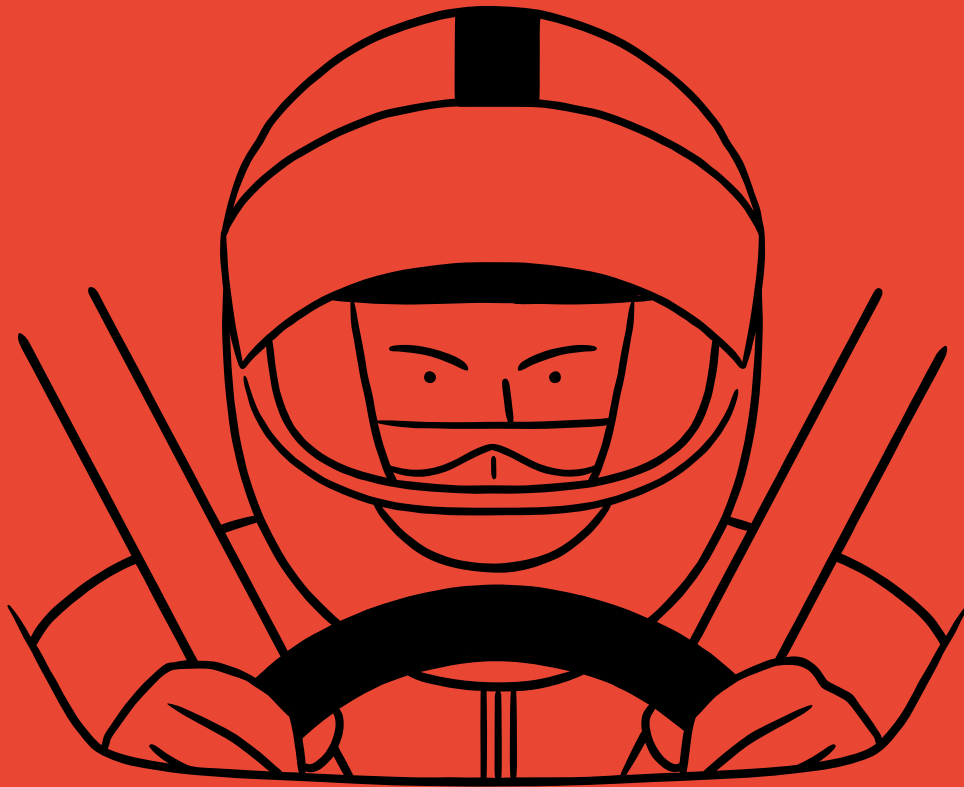
CAYMAN: Maples is advising 58.com on all aspects of the s.238 fair value appraisal proceeding arising from its recent privatisation and delisting from the NYSE, including leading the case theory, factual and expert evidence and advocacy work streams. This is one of the largest merger dissent cases ever to come before the Cayman court with an initial dissent pool of \$1.97bn based on the amount of the merger consideration.

WALKERS

GUERNSEY/LONDON: Walkers assisted Walgreen Boots Alliance Inc. in connection with a corporate restructuring relating to the sale of its pharmaceutical wholesale business to AmerisourceBergen Corp, with the company deploying proceeds of \$6.5bn to reduce debt and accelerate growth of its core retail pharmacy and healthcare businesses.

IRELAND: Walkers acted as Irish legal and tax counsel to Hertz Global Holdings Inc, the world's largest rental car company, in relation to its successful restructuring of \$19bn of debt and the return of \$1bn of value to shareholders. Walkers acted alongside White & Case, which provided US and European counsel to Hertz.

BVI: Walkers acted successfully in Convoy Collateral Ltd v Broad Idea International Limited and Cho Kwai Chee: the "Black Swan" Appeal to the Privy Council. The issue was whether the court had the power to grant a freezing order against a party to prevent them from disposing of their assets to facilitate the enforcement of a foreign order.



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HARNEYS

ESG: ‘The need to respond is immediate’

As ESG impacts every aspect of commercial activity, *Dominic Carman* examines how the offshore elite is responding to increasing client demand and sustained investment pressure



ESG was the acronym of 2021: environmental, social and governance issues became universally recognised as a key priority for every organisation. But how they are perceived and what they mean in practice remain in a state of flux. Without a single standard definition or a commonly agreed international set of rules, ESG agendas are being set by reference to myriad criteria. For offshore law firms, and for their clients, ESG has therefore become a ubiquitous umbrella term to define a broad range of objectives, commitments and standards, which they increasingly target,

support and endorse.

It's much the same onshore. Browse through the websites of a dozen global law firms and you will find a dozen different visions outlining how they are seeking to combat climate change and embrace ESG. Invariably long on aspiration, but sometimes short on substance, a host of admirable intentions is not always matched by specific details of execution – at least, not yet. The best of them convey the right messages to clients.

In its latest environment report, Latham cleverly combines commitment with commercial

▲ The COP26 conference in Glasgow this year highlighted the increasing urgency around ESG issues

opportunity: ‘Our ESG team serves as the centre of a universe that addresses complex legal needs and business challenges, regardless of a client’s industry, size, location or situation. Our lawyers are genuine superconnectors, mobilizing across practices to help clients take advantage of ESG opportunities, manage ESG risks, and drive value through ESG strategies.’ Juxtaposed with ESG, the trigger words are carefully chosen: opportunities, risks and strategies. The future of ESG will certainly feature all of them, creating significant demand for ESG specialism in law firms.

ESG 'superconnectors'

They may not describe their lawyers as 'genuine superconnectors' but how does ESG look through the offshore law firms' prism? "There's a long way to go across the world in several areas - in the regularisation of standards as to what ESG is, and what standards it should be held to," says Edward Mackereth, global managing partner at Ogier.

Common standards are not enough for Mourant's global managing partner, Jonathan Rigby: the answer, he believes, lies in legislation and regulation. "I heard some interesting comments on the topic recently from the former head of sustainable investing at one of the major global investment houses," he says. "His take was that the various ESG measurement standards have value, but relying on those alone as a mechanism for change would be disastrous. There has to be a systemic solution and that can only come from government leadership and real regulation. I agree with this. The law is going to have to change; the issue, particularly on climate, is so acute. I don't think we're going to get there quickly enough with standards alone - legal intervention is required."

Ingrid Pierce, global managing partner of Walkers, adds: "We're at the early part of our own journey; our thinking continues to evolve as we progress. There are different aspects of trying to be good corporate citizens. We've signed up to some initiatives, but we haven't set out an ambition by a particular year to become carbon neutral."

It's a frank assessment, reflecting the stage at which many offshore firms find themselves when confronted by multiple ESG challenges. "Offshore tends to follow onshore," she notes. "We keep an eye on regulations, particularly in the US and the UK, which impact managers, banks, or other client entities as



“ Some clients are very focused on ESG, either because they want to be good citizens or because their own clients and investors demand it

Ingrid Pierce, global managing partner, Walkers

other jurisdictions tend to follow suit. However, in the ESG space, it's going to take quite a long time to have globally consistent regulation. The biggest issue is having a synthesized approach. We can't ignore cultural issues in this assessment either. You can't just overlay a regulation and say: right, that's it, now we're all doing this. Countries and individuals will reject it."

A changing narrative

The regulatory process may indeed prove to be slow. You only had to watch the tortuous negotiations at the recent COP26 summit in Glasgow to see how hard it was to achieve consensus between governments across multiple jurisdictions on complex issues, such as finalisation of guidelines for the full implementation of

the Paris Agreement. But the narrative among clients, investors, consumers and markets is changing fast.

In the market for sophisticated cross-border legal services, there are more immediate drivers than inter-governmental diktats, not least client expectations and investment demand. For example, a quarter of European investment funds now classify themselves as "sustainable", reflecting investor demand for ESG-compliant investment products. Carey Olsen's global managing partner, Alex Ohlsson, notes: "People want to know the ESG credentials of what they are investing in: Jersey and Guernsey, for example, have introduced disclosure rules focusing around ESG."

ESG is important for offshore markets, according to Christian Luthi, chair of Conyers. "A success story of the SPAC market has been the attention given to the life sciences, EV and renewable energy sectors consistent with the shift in societal demands," he says.

"We are seeing governments, clients and investors place ESG high on their priority lists and this has been driving change in how deals are structured," he adds. "In particular, climate change is a major consideration for funds in the insurance-linked securities (ILS) space. Bermuda



has been positioning itself to play a leadership role in this market; catbonds are already recognised by the United Nations as a sustainable development investment class. Generally, we are seeing investors placing more focus on seeking out new ESG compliant solutions, Bermuda is uniquely placed to take what we have learnt in ILS and progress into the next natural wave of ILS growth to capital efficient climate related risk transfer and financing."

Maturing market

Mackereth concurs. "There's a lot of maturing in the market as to how to approach ESG," he says. There's been a trend before: to feel that you need to invest in specific ESG projects, a wind farm, or whatever. Whereas now, the market is maturing and investors understand that a business in whatever sector may/could be an ESG investment if it has sufficient ESG built into it as part of its business model. We've set up our ESG Advisory Centre in Hong Kong, because we think

"There's a long way to go... in the regularisation of standards as to what ESG is, and what standards it should be held to"

Edward Mackereth, global managing partner at Ogier

the market for that is going to be very big. It's perhaps taking a bit longer to gain traction, but the regulatory and legislative changes are being made there, and we've put our money where our mouth is."

He identifies a distinct change among some of the private equity firms. "There is a move away from discrete, segregated, impact products, towards a deeper incorporation of ESG factors into firms' portfolio playbooks. If you want to invest in ESG, you're not necessarily going to invest in a wind farm, but you may invest in a pharma company that

incorporates ESG into everything it does in the entire supply chain."

Pierce adds: "Some clients are very focused on ESG, either because they want to be good citizens or because their own clients and investors demand it. We have some clients creating investments/funds/structures, that have an ESG bent - like mPower. Others identify specific investments that they consider to be ESG friendly, eliminating investments in tobacco, fossil fuels and so on. Some businesses behind these products are signing up to the UN principles (UNPRI), proving that they're living what they're saying. But, as always, proof is in the fund's performance."

But ESG demand is far from uniform. "It definitely varies," she says. "We have several clients that are very active in their traditional space and when they launch new products, ESG does not feature. Maybe the investors they're appealing to are not demanding it, because once demand starts on the investor side, then managers will respond to it. Funds that

have a specific ESG strategy tend to be very niche managers, or they are being supported by a large investor that's going to inject the initial capital or write a ticket saying: this is super important to me. In the investment management sector, these strategies are not as widespread in the North American market as they are in Europe."

"The time is now"

Onshore, many firms have reconfigured their practices to meet the needs of an increasingly ESG-compliant world. In common with other large international firms, Freshfields Bruckhaus Deringer has structured its ESG focus to suit client demand. Its sustainability practice advises clients under four key headings: climate change - how a company prepares for the changing climate

in terms of its own operations and how it discloses to investors the methods it is using to mitigate current and future risks; sustainable finance - how companies raise funds to achieve the transition to a sustainable and low-carbon future; human rights - how companies evaluate and disclose information on their operations and supply chains to comply with country-specific laws, as well as investor and customer expectations; and corporate governance - assessment of how strategic decisions are made and what governance systems are in place to support the sustainability transition and how this is communicated to regulators and investors.

Since most offshore law firm clients do not have any physical or operational presence in offshore jurisdictions, some

of these considerations do not automatically apply in the same way - when giving advice on structures and deals executed under Cayman or Jersey law, for example. But the firms themselves are certainly alert to ESG challenges and to wider client considerations that they need to accommodate.

"We take ESG very seriously, independent of any obligations or pressures from clients," says Jason Romer, group managing partner of Collas Crill. "It is baked into our business plan for the coming years, following consultation with our partners and feedback from our people: we get a lot of questions about it in our town hall meetings. We've already done a lot in terms of minimising the environmental impact of what we do, but there is always more we can do – and the time is now." ►

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In terms of clients, he adds, “the highest expectations around ESG come from the bank panels. Smaller, independent businesses are not putting as much pressure on us as a business, and certainly when you look at our client base and profile in terms of litigation, private client, dispute resolution, and insolvency, it’s not something we see very much.”

Immediate response

A similar sense of urgency is apparent at Mourant. “The need to respond is immediate; we’re taking that very seriously as a firm,” says Rigby. “One of our strategic ambitions for 2025 is to receive international recognition for our ESG credentials. Intermediaries and clients with whom we work around the world demand it. It’s not only the right thing to do, it’s also the sensible thing to do, commercially. Our lawyers are having to become very conversant with the language of ESG, because it’s coming up in almost everything that we do. That presents some potentially interesting opportunities to develop new service lines. That’s something we’re starting to think about: are there things that we could be doing as a firm to help our clients to navigate the world of ESG? Beyond being conversant and helping our clients to navigate that world, is there something we can do as a value-add.”

According to Ohlsson, there are two elements to ESG. “The first is our own compliance with ESG principles as a firm,” he says. “That is certainly receiving a high profile in the UK press. I see no difference between offshore and onshore in that regard. It’s firmly on the corporate agenda of our clients, and firms are increasingly being asked to lay out their ESG credentials. That’s causing firms to adapt their behaviour.

“The other element is the opportunity in providing ESG advice. As the offshore

“ There’s an increasing amount of advisory work in relation to ESG credentials of the underlying funds and new products being launched

Alex Ohlsson, global managing partner, Carey Olsen

jurisdictions are hosts to very substantial investment structures, there’s an increasing amount of advisory work in relation to ESG credentials of the underlying funds and new products being launched, which have significant focus on ESG compliance. Equally, there’s also a concern as to greenwashing and making sure that jurisdictions are not hosting investment structures, which claim to be something they’re not. That’s something which the regulatory authorities in the jurisdictions in which we operate are focusing on.”

Putting the E, S and G in ESG

A different emphasis on ESG is offered by Ross Munro, the new managing partner of Harneys. “The E and the S help demonstrate that clients aren’t just ticking boxes, but are meeting the requirements set. Especially in the collective investment world, managers are having their feet held to the fire, and rightly so. We’re involved in those conversations, but arguably the offshore world has limited influence over a fund’s environmental or social impact.

He adds: “Our engagement with governments and regulators provides an infrastructure for reporting those kinds of issues, which is important. We are particularly engaged on the governance side, ensuring that our clients and the jurisdictions

as a whole can address concerns around whether conflicts of interest are dealt with appropriately at a board level, or within shareholders, or whether disclosures are appropriately made. We not only ensure clients understand what the law requires, but also the advantages of what our jurisdictions offer.”

The offshore world provides clear governance guidance, notes Munro. “In the western world, a lot of good governance is taken for granted, although there are still scandals in the EU and the US,” he says. “In some emerging markets, there are real challenges with basic corporate governance, and offshore jurisdictions using common law and corporate practice can advise on voting rights and capital rights within more complex structures that can’t be dealt with in some onshore jurisdictions.”

Focusing on the S in ESG, sustainability is Mackereth’s top priority. “It’s incredibly important that we all put our shoulder to that wheel,” he says. “We’ve committed to reduce our greenhouse gas emissions by 50% by 2030. We’re the first offshore law firm to make a public commitment to the science-based target initiative. There are many challenges involved in operating a firm based in international finance centres, and doing that both effectively and in a way which is sustainable. It’s not just about the travel. Many of our jurisdictions are reliant on very polluting power generation, for example. When you look at the footprint of some of our offices, we face serious challenges in getting that carbon footprint down.”

The overall narrative of ESG commitment from offshore law firms is certainly compelling, but as applies for so many organisations, the hardest part comes with sustained execution over time. Ultimately, it’s a challenge that we all have to face.

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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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