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Offshore: Time of Turmoil



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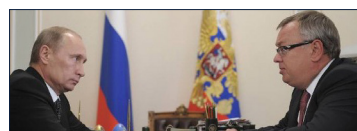
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Good Russians, bad Russians

How offshore firms are dealing with sanctions compliance, the rule of law and Russian clients



We're being asked to decide: who are good Russians and who are bad Russians. That's an impossible decision to take.' The words of a prominent offshore lawyer, reflecting on the unprecedented sanctions that were swiftly imposed against the Putin regime when Russian tanks rolled across the Ukrainian border in February. As those sanctions continue to increase in scope and scale, so do the challenges facing law firms in multiple jurisdictions, including the big offshore players.

The anonymous offshore lawyer quoted above does not claim to speak for others, but the views expressed may resonate with some. They include the following:

'The easy thing to do is just to say: no Russian work at all, full stop. That's the easy default option. But that is not fair on those Russians who oppose the

war and who need good legal representation. Equally, if we punish the entire Russian nation for the actions of a few, it will create serious global, economic and political ramifications for a long time to come, which are potentially much worse than if we take a slightly more nuanced and sophisticated view. It's hugely hypocritical of the UK government to have a go at offshore jurisdictions, when it has been the main recipient of Russian money over several decades.'

'Friction in the system'

While she does not endorse these sentiments, Ingrid Pierce, managing partner of Walkers, notes: 'We've got to differentiate between ordinary citizens and companies doing legitimate business, and affiliates of the Russian state. Although that may be difficult if somebody is not

▲ **Russian tanks rolled across the Ukrainian border in February**

currently sanctioned, potentially it's going to cause some friction in the system.'

In adopting what he would regard as a nuanced and sophisticated view, the French president Emmanuel Macron recently said that it was important not to 'humiliate' Russia over the war in Ukraine and that maintaining dialogue with Putin was crucial 'so that the day when the fighting stops, we can build an exit ramp through diplomatic means.'

Italy's prime minister Mario Draghi has aligned himself with Macron, suggesting that Europe wants 'some credible negotiations.' But so far, the UK and US governments have been steadfast in their support for Ukraine, whose president Volodymyr Zelenskyy responded to the Franco-Italian position by saying: 'We must not look for a

way out for Russia, and Macron is doing it in vain.'

Law firms invariably prefer to stay out of politics. So where do they stand in relation to the Ukraine conflict, compliance with sanctions and the complex issues that arise?

The response from some is low-key and measured. 'We respect and comply with all international sanctions and local regulations and have reviewed our client list and taken [any] required actions accordingly,' says Christian Luthi, chairman of Conyers. 'We have robust sanctions screening procedures in place which have kept our sanctions teams busy, although there has been minimal financial impact on our businesses overall.'

Different risk appetites

Edward Mackereth, Ogier's global managing partner, identifies 'a fairly marked difference in risk appetite between some onshore firms who are less risk averse, and happy to act for people as long as it's not against the letter of the law, and most offshore firms who are more risk averse - perhaps being cognizant that they are in a much smaller universe, and potentially more obvious targets.'

Ogier does not have a huge Russian client base, notes Mackereth. 'Russia had already gone through a period of de-offshorisation: we're much less exposed to the Russian market than a decade ago, and much less exposed than many London firms,' he says. 'We're going further than our strict legal and regulatory obligations in respect of who we choose to do business with: in stating that we would not assist people we thought were likely to be close to the Putin regime, or in trying to rearrange their affairs so that they could be sanctioned proof, for example. We've turned down a fair bit of work, mostly originated from outside our jurisdictional



“ We’ve got to differentiate between ordinary citizens and companies doing legitimate business, and affiliates of the Russian state ”
Ingrid Pierce, managing partner, Walkers

footprint.'

The message from Bedell Cristin's global managing partner, Tim Pearce, is unambiguous. 'We're not telling the world about what we're doing to help Ukraine because that should be a given for any right-minded international firm,' he says. 'Instead, we state what our position is with regard to Russian clients. Like some of our competitors, we decided many years ago to limit our exposure to Russian business. We've always been very careful in what we take on, being compliant with international law and regulations.'

'Atrocious situation'

He describes the Ukraine situation as 'atrocious: we all feel for what's happening there.' But, he adds, legitimate business is continuing. 'There are certain clients I might

take on in a heartbeat - when you've met them and asked questions face-to-face that you wouldn't necessarily ask in an email. KYC is more than just a passport and a utility bill, it's understanding their business.'

Harneys global managing partner, Ross Munro, has been cautious from day one. 'My advice to colleagues at the outset was: this isn't short-term, it's a material change, and it's likely to escalate in terms of sanctions,' he says. 'That's proven to be true: the extent of sanctions has escalated perhaps even further than anticipated.'

'It goes without saying that we're complying with all the public sanctions,' he adds. 'But our risk appetite towards anything with a Russia nexus, including Belarus and Ukraine, has changed materially. In terms of new clients, the burden of demonstrating that you are a suitable client has shifted significantly - that's not something we take on lightly. We have no interest in acting for anything that is supporting the Russian state or organisations supporting it. That leads to greater KYC and CDD requirements, but also an acknowledgement that sometimes it's just not worth doing: it can be too hard to prove that negative.'

Sanctions compliance

Pierce explains the compliance process: 'The immediate questions for us and for every other firm: What filings do you have to make? How do you comply with the sanctions? What do we need to advise our clients? Everybody needs to know what they're doing, be up to speed on the laws and regulations, and be able to give advice quickly.'

'We typically act for institutional clients who want to comply with the rules. Most of the early questions were along the lines of - if we have a sanctioned investor, can we kick them out? To which the answer was: no, you can't do anything. You must just follow the rules, make the filings and report as appropriate. Lots of other people, who were not our clients, wanted advice.'

Dealing with sanctions is not new, but the Ukraine situation is different, notes Pierce. 'After the initial flurry of activity on the regulatory side, the extent of the crisis and how quickly it escalated produced a very visceral reaction,' she says. 'While we have friends and clients and longstanding associations in both Russia and Ukraine, one can't ignore the really significant humanitarian aspect. It becomes very difficult to look at things from a purely business perspective.'

Difficult decisions

At Collas Crill, group managing partner Jason Romer describes dealing with the impact of the Ukraine war as 'the biggest thing we've had to consider.'

There were some difficult decisions, he says. 'Where trust structures have been established for the benefit of a wider family - not connected to Putin in any way - where Russians have transferred their wealth to their children or wider family, even if maybe that they're not sanctioned yet themselves, the question is: do you help to facilitate the movement



“ This isn't short-term, it's a material change, and it's likely to escalate in terms of sanctions

Ross Munro, global managing partner, Harneys

of that money back to Russia? Our stance has been: no, we're not going to do that, even in circumstances where the individual or their children have not been sanctioned.'

Like Ogier and Bedell, Collas Crill does not have a lot of Russian or Belarusian clients - less than 5% of revenues. The firm has a Russian Approval Committee 'to make sure that we're doing everything we can to support the international efforts to bring the war to an end,' says Romer. The Committee meets up to three times a week to discuss any new matter that has a Russian or Belarusian connection.

Turning work away

'The challenge for us has been less than for some businesses,' he notes. 'Nevertheless, we've turned away quite a lot of work - either

where competitors have ceased to act for clients and they've come looking for alternative providers, or where we've had existing clients who are looking to do work where we don't feel comfortable.'

'We've had some unhappy clients who have objected because we've chosen not to take the work on. Generally, they understand. Where we see that money is being moved from our jurisdictions back to Russia, we take a very close look at the underlying rationale. In the vast majority of cases, we've chosen not to act.'

Pearce offers a view of the post-conflict world. 'The war is not going to last forever,' he says. 'As part of any peace treaty, the question will be: how quickly sanctions will be lifted. It will be different from North Korea and Iran, simply because the West needs Russia - there's a symbiotic relationship, unfortunately. It's going to take the West a long time to be weaned off oil and gas and other commodities.'

There's still going to be a long tail, he suggests. 'But legitimate business disputes will eventually need to be heard and go to trial. When they do, if a jurisdiction has closed that sort of business down because the courts won't entertain it, then it will go elsewhere.'

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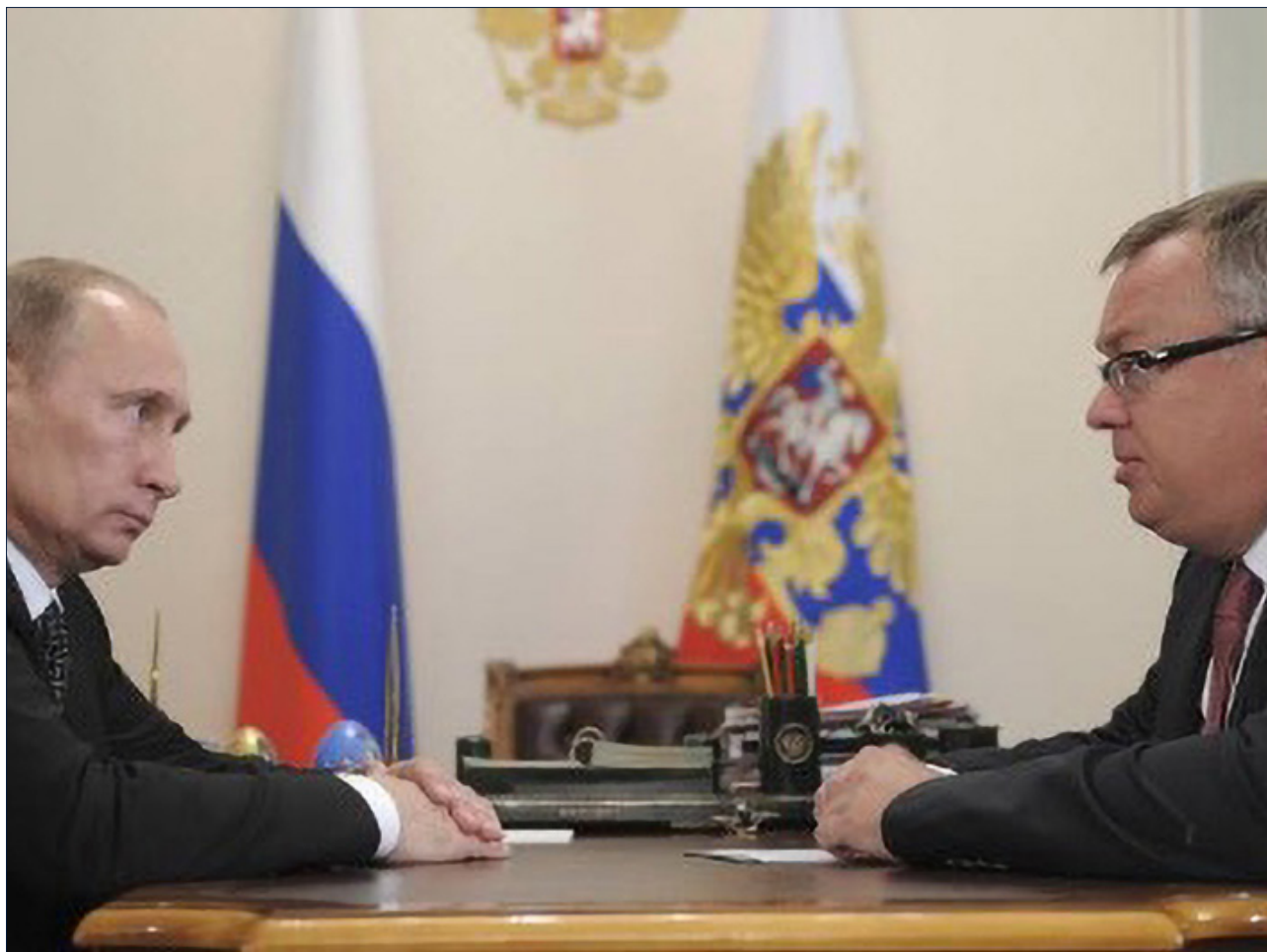
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‘Even pariahs have rights’

BVI judgment identifies competing duties in representing sanctioned clients. Are law firms now ‘moral policemen’?



It is a judgment that divides opinion about a law firm's duties: to the court, to their client and to comply with sanctions directives. Normally, no conflict arises between them. But in March, Mr Justice Jack denied Ogier's application in the BVI to come off the record in advising the (now sanctioned) Russian bank, VTB - Russia's second-biggest lender.

Ogier had been advising VTB over proceedings in the BVI Commercial Court to enforce Russian judgments against several Russian businessmen and various

related businesses. As a British Overseas Territory, UK sanctions automatically extend to the BVI.

In making an application to come off the record, Ogier instructed David Alexander QC, joint head of chambers at South Square, while Maples and Carey Olsen acted for the defendants.

Ogier's application cited Russia's 'unprovoked' invasion of Ukraine and the UK government sanctions that quickly followed.

The firm said that it could not 'represent VTB without the risk of Ogier and people who work

▲ **Russian President Vladimir Putin and VTB chairman Andrey Kostin**

for Ogier being in breach of the sanctions regime' and that it would 'not place its employees in that sort of jeopardy'. It further cited reputational concerns, the firm's ethics and code of practice, and argued that VTB could no longer pay for the litigation because of the sanctions imposed against it.

Duties to the court

In refusing Ogier's application, Mr Justice Jack held that VTB's right to litigate was not curtailed by the UK sanctions and that the

firm had duties to the court that 'outweigh' other considerations, including reputational damage. The judge cited the statement of I. Stephanie Boyce, president of the Law Society of England & Wales. Following Russia's invasion of Ukraine, she said: 'It's the job of solicitors to represent their clients, whoever they may be, so that the courts act fairly'.

According to the judgment: 'It is precisely when VTB are stigmatised as a pariah that VTB need the best endeavours of their legal representatives to advise them and to advocate in court on their behalf. However uncomfortable it may be for Ogier, this is, as Ms Boyce asserted in respect of England and Wales, a vital safeguard for ensuring the rule of law in this territory. Even pariahs have rights.' The judge further noted that 'the

“ It is essential to have a dialogue with all clients who are at risk of the imposition of sanctions

Christian Luthi, chairman of Conyers

effect of Ogier ceasing to act would be potentially disastrous for VTB's conduct of the current proceedings.'

On reputational damage, he outlined the competing interests: 'There is on the one hand Ogier's commercial interest in keeping its name unsullied by association with Russian state entities. Their contractual terms entitle them to terminate the retainer. On the other hand, their duties as officers of the court require them

to maintain the rule of law by ensuring access to the courts for the proper and fair determination of parties' rights and obligations.'

Jack stated that he was intentionally giving 'an open judgment without anonymisation so that it will be known that Ogier are continuing to act for VTB not out of personal choice, but because this Court has refused to allow them to stop acting for VTB.' On the issue of payments, he concluded: 'Given the large amount of work Ogier have done for VTB, a short period where they cannot bill whilst a licence is being obtained is not onerous.'

Rule of law v sanctions directives

Ogier's global managing partner, Edward Mackereth, says: 'The judgment raises some really interesting jurisprudential

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questions as to the rule of law versus the political and legislative directives of sanctions. There's no precedent that we have found. It's slightly uncomfortable being the test case, but we believe we've done the right thing at every step.'

So how do other offshore firms see Jack's ruling?

Conyers' chairman Christian Luthi offers a critique. 'The fast-changing nature of increased sanctions on Russian and Belarusian entities and individuals has necessarily increased the regulatory burden for BVI litigation matters,' he says. 'The effect of Justice Jack's decision in the VTB matter has put this into even sharper focus. It is essential to have a dialogue with all clients who are at risk of the imposition of sanctions so that they can be ready in the event that we are forced to consider our position.'

'We are astute to ensure that our clients appreciate that, if they become subject to sanctions, at some point we must stop acting. Justice Jack's decision, properly viewed, comes down to a question of timing. The Court did not consider it appropriate in the circumstances of that case for Ogier to be permitted to withdraw immediately upon the imposition of sanctions against the bank. One can see in certain cases this view may well prevail. For a different fact pattern, it may be that ceasing to act immediately is appropriate - and indeed, required.'

According to Ingrid Pierce, global managing partner at Walkers, 'There's always going to be a time when, as a lawyer, you say: my first duty is to the court, I have my duty to my client, and then I have to say: is this work I'm comfortable doing and want to do? - one should be able to separate from that.'

Lawyers: 'moral policemen'

Jason Romer, group managing partner of Collas Crill, adds:



“ Law firms are being asked to step into a place they haven’t been before: to act as moral policemen

Jason Romer, group managing partner, Collas Crill

'Many lawyers act for criminals; they're not asked to make these types of judgments. It's our duty, our moral obligation to do the right thing in these circumstances. Law firms are being asked to step into a place they haven't been before: to act as moral policemen. It's not just around the legality of what's being done, but the morality of what's being done. That puts law firms in a position they haven't had to take so overtly before.'

'This is a new era, where, very publicly, people are being asked to take a moral stance on who they do or don't act for. You can see that moral dilemma being played out right across the world, but particularly acutely in the difference between that BVI judgment and the position that the Jersey Law Society has taken.'

'It has sent a communication to law firms, which says that termination of retainers on the basis of just cause is okay, where there are reputational issues associated with acting for Russian or Belarusian clients. So, the BVI courts have taken one position, the Jersey Law Society has taken a diametrically opposite position, and it's up to the law firms to work out what the right position is.'

Harneys' global managing partner Ross Munro broadens the argument. 'If you've got sanctioned entities involved in litigation, depending on where, it's going to be difficult for litigation to carry on in a sanctioned world with the ability to travel and transfer money,' he says.

'Whether you stay on the record and remain a post box for service of documents is really not that important in the big scheme of things. The bigger question for any case is what happens to the proceedings. Litigation stopping or becoming very protracted is likely to suit one party more than others. It is easy to see circumstances where a non-sanctioned party to proceedings which involve a sanctioned party being prejudiced by that.'



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Gibraltar: Crypto disputes on the Rock

In the first jurisdiction to regulate crypto, litigation seems inevitable



For the 33,000 people who call it home, Gibraltar is a prosperous place. In terms of GDP per capita, its £2.4bn service-led economy is ranked fourth in the world by the IMF. But, as elsewhere, global economic difficulties are causing local lawyers to speculate about an imminent surge in insolvency and restructuring work.

Currently, most high-profile disputes in the jurisdiction involve private individuals, blue-chip companies and financial institutions that are engaged in

cross-border commercial litigation, alternative dispute resolution, complex liquidations and negligence claims.

From a disputes perspective, the largest flows into Gibraltar come from the City of London matched by an increasing two-way traffic: a litigation and arbitration push from Gibraltar into the UK as local firms work with their colleagues in London on English law mandates.

International litigation

As the largest firm in the jurisdiction, Hassans has more

▲ Gibraltar became the first jurisdiction to launch a framework for market integrity this year

than 90 lawyers, ahead of its biggest commercial rivals: Triay, ISOLAS and TSN. 'The mainstay of our commercial litigation practice is international work,' says Hassans head of litigation, Lewis Baglietto QC. 'In particular, large corporate and complex insolvency cases, as well as cross-border disputes.'

The head of Hassans' insolvency disputes practice, Daniel Feetham QC, adds that beyond Gibraltar work, members of his team undertake cases in England and in the Caribbean.

For over a decade, the prosperity of Gibraltar's 2.6 square miles has been spearheaded by the virtual gaming industry - the largest in Europe and the biggest local employer. More recently, cryptoassets have emerged as another engine of economic growth on the Rock.

As the world's first jurisdiction to launch a legal and regulatory framework for crypto assets in 2018, Gibraltar became 'the first jurisdiction to launch a framework for market integrity' this year, according to Albert Isola, the territory's minister for digital and financial services. Gibraltar's regulator has already approved 14 cryptocurrency and blockchain firms for its licensing scheme.

According to Elliott Phillips, partner of specialist boutique Signature Litigation, 'Gibraltar looked at how it regulated

“ We’re doing a lot of work in Gibraltar, together with our colleagues in London

Elliott Phillips, partner, Signature Litigation

the online gaming industry, seizing the opportunity to be a first mover in this emerging technology. And it did so successfully, establishing a regulatory framework around distributive ledger technology, and generating a lot of interest from entrepreneurs. Now it is looking at cryptocurrency exchanges.’

Regulation push

Pivotal perhaps to Gibraltar's future prosperity, crypto has

not yet generated dispute resolution work for local law firms. But that may be about to change. Hassans partner Darren Martinez, explains: 'Our Financial Services Commission, in conjunction with the government, has really pushed hard to regulate this market. It's at the stage where people are setting up, there have been a lot of initial offerings, raising capital, and there will be disputes because there are a lot of big players here.'

Leveraging its international footprint in London and Paris, Signature Litigation's Gibraltar office was established five years ago. The firm handles domestic and cross-border disputes, although much of its current work is in private wealth disputes, contentious trusts, and estates disputes, as well as

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general commercial litigation, insolvency and restructuring.

Phillips also predicts that crypto disputes will grow. 'We are seeing a number of disputes around digital assets in London, although so far there have not yet been claims in this jurisdiction. But there will be, including in disputes on NFTs (non-fungible tokens). But we're doing a lot of work in Gibraltar, together with our colleagues in London, so that we've become the first port of call when these disputes do arise on the Rock.'

Inevitably, the US leads the way in big-ticket crypto disputes – from alleged crypto-market manipulation, share and token valuation disputes, to claims involving breach of contract, fraud, hacking, negligence, and breaches of fiduciary duty. English courts have also ruled on disputes involving cryptoassets, deploying freezing orders, disclosure orders



“ People are setting up, there have been a lot of initial offerings, raising capital, and there will be disputes

Darren Martinez, partner, Hassans

and other interim measures, to help claimants who have been defrauded.

Underpinned by new crypto regulations that target potential market manipulation and insider trading, it seems very likely that Gibraltar's bid to be a global crypto hub will also lead to crypto disputes in due course.

Post-Brexit, a treaty awaits

The UK may have left the European Union two and a half years ago, but Gibraltar is still in a state of limbo under transitional arrangements. Spain and the UK have held eight rounds of talks over the terms of a treaty to resolve the impasse without any agreement being reached on the core issues: free movement of goods and people, border patrol, state aid, environmental rules and the coordination of social security systems. Despite Spain's aspirations over the Rock's sovereignty, Gibraltar retains a unique brand of Britishness.

'Gibraltar is working hard in a challenging environment in attempting to secure a positive treaty with the EU whilst maintaining its historic and commercial links with the United Kingdom,' says Elliot Phillips, Gibraltar-based partner at Signature Litigation. 'The challenge for its future will be the outcome of the Brexit treaty negotiations, how that pans out and what that looks like for people moving across the land frontier with Spain. But ultimately, Gibraltar's future will most likely be dependent on opportunities that arise in the context of longstanding relationships with the City of London and elsewhere in the United Kingdom, which account for more than 90% of its work.'

Trade, free movement impacted

The unresolved status of Gibraltar's relationship with the EU is a significant issue for many law firm clients because of its

impact on trade with Spain and the free movement of people between the two.

Daniel Feetham QC MP, a Gibraltarian parliamentarian who served as Leader of the Opposition, is also Head of Insolvency & Insurance Litigation at Hassans. He explains the challenge from a personal perspective: 'Without a deal, there are restrictions at the frontier, which will have an adverse effect on over 14,000 cross border workers living in Spain, the vast majority of whom are Spanish, and will simply entrench opinions in Gibraltar,' he says.

'Our trade with the UK has quadrupled in the past decade and has accelerated as a consequence of Brexit - because we have no European markets, but we've got the UK. Greater economic integration with the UK will potentially mean a clamour locally for greater political integration, such as representation at Westminster for Gibraltar. From the viewpoint of Spanish diplomacy that is a lose scenario. It is in their interests to have a free-flowing frontier, where eventually Gibraltar becomes economically integrated into the EU.'

Gibraltar's chief minister, Fabian Picardo, recently said that the two sides were within 'touching distance' of a new treaty. But no-one is expecting anything to be agreed before the autumn. What that will mean in practice for communities on both sides of the border remains to be seen.

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Economic headwinds blow hard

As the World Bank forecasts stagflation, offshore firms see a silver lining



Except for a depressingly small minority among them, lawyers know nothing. They are incapable of logic.' The words of Willem Buiter, a distinguished academic and former chief economist at Citigroup. His polemic against lawyers is quoted extensively in an Economist article headed 'Can lawyers be economists?'

Buiter's judgment is clearly flawed. Offshore lawyers may not know the intricacies of modern monetary theory, but they do understand opportunity cost,

diminishing returns, market equilibrium, economic efficiency, comparative advantage, and so on. They have to. Not only are they advising business clients whose commercial decisions are dependent upon anticipating and reacting to economic events, but they are also running sizeable international businesses themselves, spread across a range of far-flung islands.

'Economic hurricane'

Recent events have combined to produce another set of

▲ **The World Bank has warned of potential global stagflation**

economic challenges. Against a background of high inflation, low growth, rising interest rates, and a potential recession, JPMorgan Chase's CEO, Jamie Dimon, has warned of 'an economic hurricane' while Elon Musk has a 'super bad feeling' about the global economy. Perhaps more significantly, the World Bank has warned of potential global stagflation while the OECD predicts very low growth next year, and none at all in the UK.

In looking ahead, offshore law firms have a unique perspective:

what their international clients are planning to do over the coming year gives them an insight across multiple jurisdictions. So how do they see the next 12 months, and which practice areas are set to grow?

Conyers' chairman Christian Luthi is circumspect. 'The conflict in Ukraine has compounded a challenging global market environment, particularly with respect to supply chains and energy challenges,' he says. 'This, combined with equity market turmoil and aggressive lockdowns in China has led to a degree of uncertainty around the direction of this year.'

Anticipating recession

Some clients are 'concerned about their current basket of assets reducing in value,' notes Ingrid Pierce, Walkers' global managing partner. 'Because inflation is not under control, there's talk of very modest interest rate increases, and so previously guaranteed returns are no longer available. Investors are getting very skittish, looking at alternative sources that may provide some short-term upside.'

At Collas Crill, group managing partner Jason Romer adds: 'We haven't seen any evidence of it yet, but we're anticipating a recession. Everything that's happening with oil prices, commodities and interest rates rising, we'll feel that in the latter half of the year.' In terms of economic cycles, he notes, offshore tends to lag behind onshore by about six months.

'Looking into the crystal ball, it feels like the disruption that we thought would happen in 2020, as a result of the pandemic, is now going to hit,' says Ross Munro, Harneys' global managing partner. 'The capital markets are taking quite a hammering; debt markets have been pretty tough. We expect to see take private transactions, and we've already



“ We anticipate that we will continue to grow steadily and expect to reach the 3,000-employee milestone in the next two to three years

Jonathan Green, global managing partner, Maples

done some of those. If markets show decline, there is a natural instinct to hold on to cash, but then inflation is running away in different markets to different extents.'

Disruption brings opportunity

Despite these strong economic headwinds, Munro also sees a silver lining. 'Where there's disruption, there's normally opportunity,' he says. Luthi concurs, noting that 'market volatility has created demand for new fund launches (hedge funds and crypto funds), as well as many restructurings, wind-downs, liquidations, and related disputes.' Conyers has started to see a return of new aircraft financing transactions and 'a lot of tech-related queries, especially in our Cayman office,' he notes.

Edward Mackereth, global managing partner at Ogier, says: 'Although there are many challenging signs, there are lots of well-resourced investors still looking to do deals. The real estate market is still hot and PE houses are still active: not everyone is hunkering down yet. Our corporate teams are having a normal year - not beating their budget with double digit growth, as they have done the last couple of years, but certainly not quiet.'

He notes a shift away from public equities towards private equity, distressed debt, litigation financing, and VC investment strategies. 'Until early May, there had been a marked increase in appetite, both with established and emerging managers, for positions in digital assets, mainly Bitcoin and Ether,' he adds.

Tremendous growth

Taking a medium-term view, Maples global managing partner Jonathan Green is notably bullish. 'The Maples Group continues to experience tremendous growth across our 16 locations worldwide,' he says. The firm surpassed the 2,000 staff mark in 2019 and is about to reach 2,500 this year. 'We anticipate that we will continue to grow steadily and expect to reach the 3,000-employee milestone in

the next two to three years,' he says. Although not necessarily an indicator of the immediate future, he also points to 'noticeable peaks' over the past year in SPACs, restructurings and insolvency-related work, IPOs and regulatory matters.

Over the next year, Bedell Cristin's global managing partner Tim Pearce anticipates growth in several areas. 'Private client work is booming in every part of the world: it's a real growth sector for us,' he says. 'Disputes is also a large part of our practice. We see that growing too - not just adversarial disputes, but mediation and arbitration.'

He explains: 'In any economic cycle, once things start to go down, people look to find value elsewhere: they try and pick someone else's pocket. There will inevitably be more disputes. As they see the value of their assets being eroded by inflation, they can look to pick up disputes that they've had, or challenge the value of an investment - a joint venture dispute, challenging an investment valuation.' In terms of big-ticket litigation, he points to Bedell's involvement in Evergrande, China's troubled property developer, as 'an obvious example.'

Swift recovery

Looking further ahead, he too is bullish. 'The recovery will be swift,' he says. 'There are pension funds and private equity investors sitting on lots of money that needs to find a return. There are no excuses for pension funds not creating a return, or for private equity not to deploy their capital. The capital markets are slightly depressed, but they will bounce back very quickly, probably by the end of the year. We're pretty optimistic.'

Romer offers a different growth perspective. 'Insolvency will continue to boom: a toxic mix of unfortunate and sad



“ There are pension funds and private equity investors sitting on lots of money that needs to find a return

Tim Pearce, global managing partner, Bedell Cristin

circumstances,' he says. 'But when you put them together, I fear that we're in for some tough times economically, which will lead to greater demand for insolvency. We're seeing a wave of insolvency and liquidation work coming out of Asia.' He also anticipates 'a continued trend of people looking, either to move offshore, or to structure their affairs appropriately in the face of an ever-higher UK tax burden.'

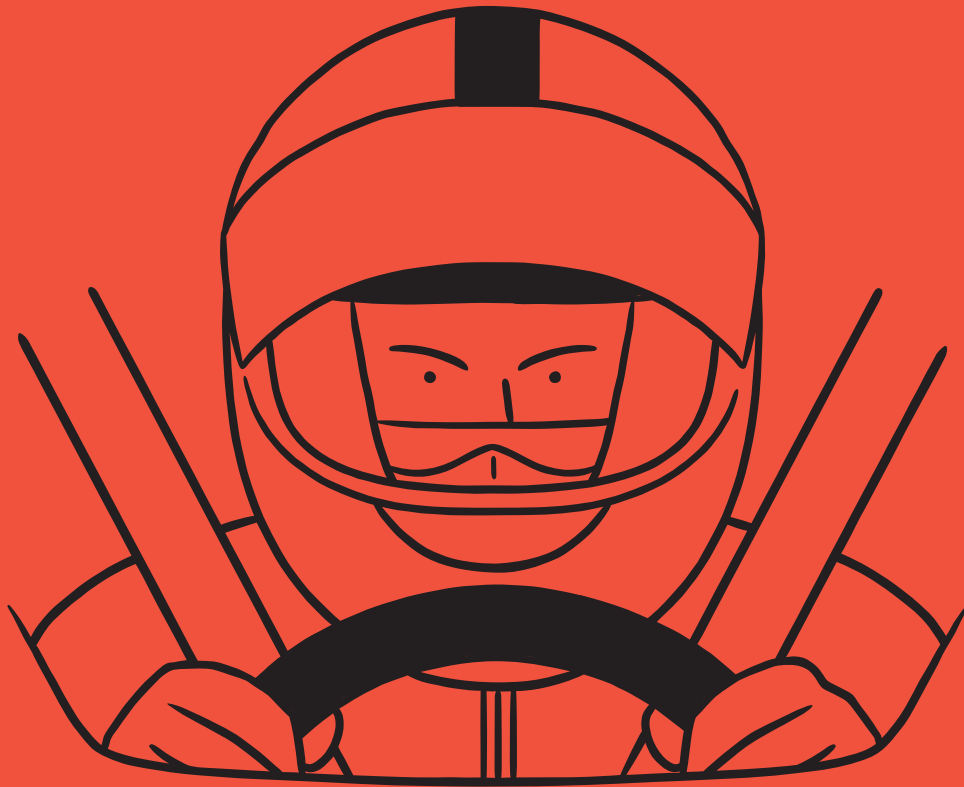
Luthi offers a similar prognosis. 'We expect more restructuring work,' he says. 'Interest rates/inflation are increasing. There was a boom with the money that was pumped into economies across the globe - including for example, the boom in SPACs - that often leads to investment in poor performing or overpriced assets that we expect will ultimately lead to restructuring, sometimes contentious restructuring. Our Hong Kong office in particular

is seeing a lot of cross-border insolvency and restructuring matters for Bermuda and Cayman, driven by the economic downturn in mainland China and Hong Kong and consequent increase in loan defaults.'

More restructuring

Harneys is also involved in the Evergrande restructuring and anticipates similar work continuing to emerge from Asia. In addition, Munro points to cryptoassets. 'We're seeing a lot of activity in this space,' he says. 'We did a block asset launch in Cayman of some NFT collections from the US. The boom in cryptocurrencies in the BVI has led to an inevitable surge in cases where digital assets have been misappropriated, or dissipated. The number of cases concerning fraud and misappropriation means that digital asset tracing is rapidly on the up.'

ESG is becoming an increasingly important and integral part of the conversation between managers and investors, according to Green. 'The Maples Group's ESG capabilities and expertise are increasing in prominence across all of our offices, particularly our European, Cayman Islands and BVI practices,' he says. Maples works with leading investment managers and institutional investors in



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Europe, America and Asia to help implement ESG policies and frameworks into their various fund and other operational infrastructures. 'We expect this area to continue to grow strongly over the coming years,' he adds.

Mackereth echoes the ESG point and provides context. 'ESG is still a consistent topic for our lender clients,' he says. 'There was a suspicion that when the economic headwinds got too great, ESG would perhaps drop down the agenda. But it's become apparent that it will be absolutely central to what lenders will be doing for years to come, monitoring compliance with ESG KPIs (key performance indicators) in loan documentation, for example, which will become ever more set as key lending criteria.'

Disputes aplenty

Ogier's disputes practice will continue to thrive, he suggests. 'Our disputes team is very busy,' he says. 'We're heavily into regulatory disputes, arising from international finance centres raising the regulatory bar, and the pips squeaking, as well as regulatory work relating to sanctions. Also, complex dynastic matters - for example, a restructuring in Cayman and

Jersey structures, which are both multibillion-dollar blessing applications for a restructuring, in relation to an ultra-high net worth US-domiciled family, incorporating lots of Swiss tax advice.'

Funds work will also remain strong, suggests Mackereth. 'Our Cayman law funds team, incorporating Hong Kong, is very busy,' he says. Pointing to 'a really strong pipeline from both North and, increasingly, South America,' he says that 'the increase in LatAm funds using Cayman structuring is notable, both investing out of and into LatAm. There's also a lot of venture capital start-ups in the tech space, particularly in Brazil, which is a real hotspot.'

Ogier now has a rep office in Shanghai as well as an office in Singapore. 'We think there's a lot of work there,' says Mackereth. 'But there is risk: political and human rights headwinds and tensions between the US and the PRC on Taiwan and other issues could quickly go in the wrong direction. There have been departures from Hong Kong, both temporary and permanent. Firms like ours need to be agile in seeing where those capital sources are flowing: more

▲ ESG is now critical for lenders and companies alike

through Singapore and some through the middle east.'

Pierce identifies several growth areas for Walkers. 'On the acquisition side, hedge fund clients are starting to behave more like private equity (PE) firms and PE firms are acquiring meaningful stakes in companies: we're doing a lot of spin-out work on these deals,' she says. Disputes work has also been very busy right across the firm. 'Section 238 work remains prominent, but there's a healthy mix of instructions: trust disputes, shareholder disputes, general commercial litigation, contentious liquidation issues, and, of course, restructuring.'

She cites Cayman and London as jurisdictions that will continue to grow. 'In Cayman, we've seen growth across the board: investment funds, finance, disputes, regulatory and private capital,' she says. 'In London, our growth has been driven by a combination of legal and business services. You would think London is so expensive to hire people, but on a relative basis, it's not so bad.'

Recruitment challenge

As with every large offshore firm, recruitment remains a challenge. 'We haven't been able to recruit fast enough,' says Pierce. 'It's

“ We haven’t been able to recruit fast enough... It’s a tough recruitment market, but we need to recruit because we’re so busy

Ingrid Pierce, managing partner, Walkers

a tough recruitment market, but we need to recruit because we’re so busy. We and others will continue to see some outbound moves from people who no longer want to do their job following the pandemic, or they want to do something different: a change of scene, of career, no career, whatever. Some outbound moves are triggered by very personal issues; others have been dislocated from their families for a very long time and need to reconnect.’

On the bidding war for talent in New York and London, Pierce says ‘some of the numbers are eye-watering.’ She adds: ‘That will probably have a knock-on effect, and maybe it’ll cause everybody to open their pocketbooks and delve deeper to make certain trades. It’s not been hard for us to recruit really good quality people and we’ve hired a crop of incredibly high-quality associates. But the work is there and we need people. We’re going to have a lot of growth across all areas of the business.’



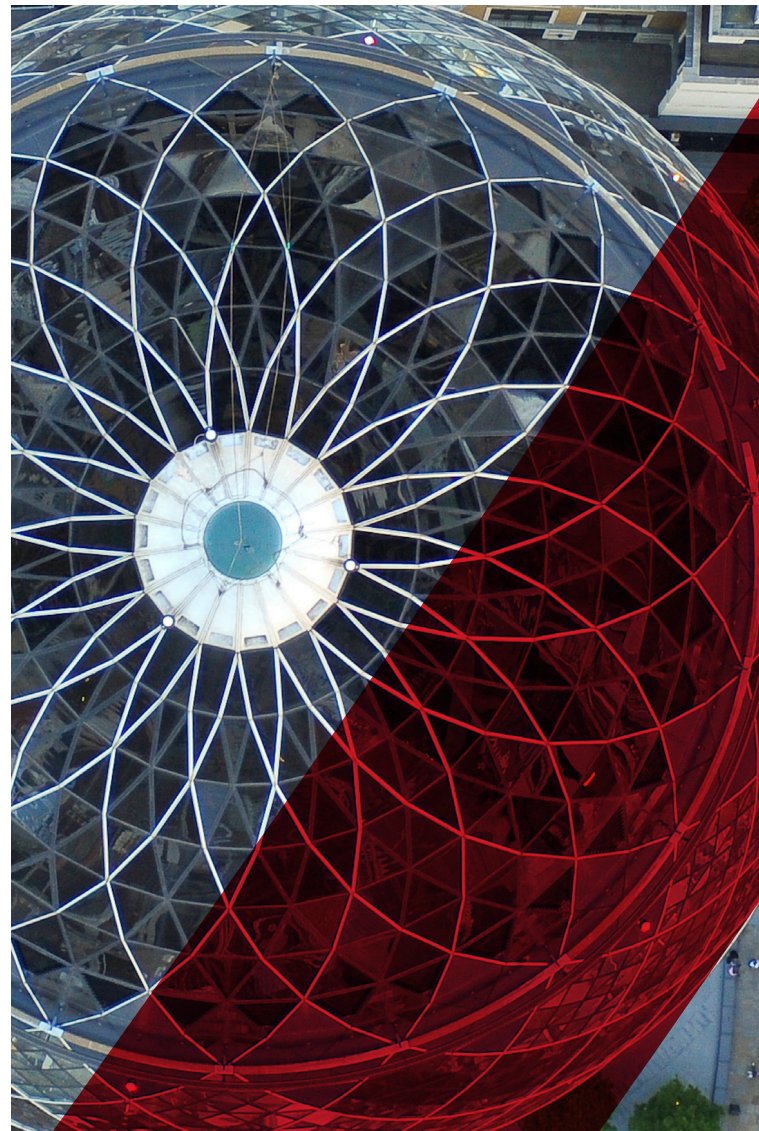
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Setting up during lockdown

How Edward Scott and Co became Jersey's latest boutique

Having learnt his trade in London (training at Dentons), and in Jersey (Ogier and Dickinson Gleeson), Edward Scott is a busy lawyer. Together with his colleague, Kirsten Faichnie, he runs an eponymous offshore law firm, Edward Scott and Co - a boutique Jersey practice that advises on complex corporate and finance transactions, as well as regulatory and funds work.

Scott made the decision to set up shop in 2020 during the height of lockdown. 'When transactions slowed down, I had the time to plan for a long-held ambition,' he says. Faichnie, who joined at the outset, was a natural fit as a corporate and funds regulation specialist having spent 11 years at Moutant. 'We were very lucky to be busy from the get-go with a very good-sized transaction to work on,' says Scott. 'Client attitudes to smaller outfits have changed.'

Recent research shows that almost 40% of lawyers want to launch their own firms, but very few ever realise their dream. So how did Scott manage it?

A risk, a leap of faith

'I'm from Jersey, so I always thought I'd end up here,' he says. 'Working for myself suits me very well - but it was a bit of risk, a leap of faith'. Scott's background has not only given him the right experience, but also provides a useful network that creates a bedrock of referral work - mostly from London lawyers. 'It's enabled me to be confident in selling my services at a smaller firm, and now, on my own letterhead,' he says.



“ When transactions slowed down, I had the time to plan for a long-held ambition

Edward Scott, principal, Edward Scott and Co

'I've got a fairly entrepreneurial streak, but much of my decision came down to not fitting well within the pyramid structure at bigger Jersey firms.'

Scott explains that the larger St Helier firms emulate the Magic Circle with a sizeable team of associates working for each partner. 'That runs against my nature,' he says. 'I'm not the best delegator. I like to know what goes on in the detail. So, having a smaller firm, where the business model is different, because you have such a lower

cost base, enables me to stay involved in the detail of day-to-day alongside Kirsten with whom I work very effectively. She's a very capable lawyer and extremely collaborative.'

'Between us, we're all over every client matter. Clients say they like this approach because they get someone they can phone who knows exactly what's going on in a transaction, and can give a steer on the spot, rather than having to go through various layers before getting to the final answer.'

Varied workflow

The workflow is varied. 'We do a lot of legal opinions as well as UK commercial real estate work and re-financings,' he explains. 'But where we feel we can shine is on tricky transactions, where things move very quickly and clients get answers from us in a readily digestible form.' Having

overseen numerous transactions, he can spot legal issues and timing crunches early on. 'Clients really like that,' he says.

'Some clients will always use the bigger names, but there are also some very high calibre clients who are happy to instruct a smaller outfit exclusively in Jersey. Impress them once and stick to that level of service and they stay. It's been great to attract and retain some great clients.' Among the big names on his roster are Landsec, the UK's largest commercial property development company, the Reuben brothers, and Tellon Capital, an Israeli finance specialist in UK real estate investment.

'Together, corporate and finance comprise roughly 80% of our work,' says Scott. 'Sectorally, UK commercial real estate is two-thirds of what we do. But it's still early days and we've been lucky to be busy, surpassing all expectations.'

Testimonials in the legal directories pay fulsome tribute



to the quality of the firm's work. So, what next? 'There's no grand plan, but I'm always open to bringing in a very senior person - partner level or consultant - who has their own expertise to complement ours,' says Scott. 'Perhaps someone who has tired

▲ **Kirsten Faichnie was a natural fit as a corporate and funds regulation specialist**

of a larger firm. But we've no real intention of cornering the Jersey legal market, so Mourant and Ogier need not be quaking in their boots. We're just an alternative in a small way to those bigger brands for the right clients who might prefer us.'



Ogier Leman merger:

An offshore force in Dublin's legal market

Ogier's recent merger with Dublin-based Leman solicitors is one of this year's most notable offshore developments. Announced in March and formalised in May, the creation of Ireland-registered Ogier Leman LLP continues a pattern of expansion over the past 12 months. Following a Singapore launch last August, Ogier became the first offshore firm to open a Beijing office in February. The addition of Leman's 53-strong Dublin team, including nine partners, boosts its lawyer headcount by more than 10% across the network.

'We serve a broad range of international clients who want a joined-up service executed to a high standard,' explains Edward Mackereth, Ogier's global managing partner. 'We believed that a Dublin move would be a further step in providing that joined up service. We recognise that Ogier doesn't yet have very significant brand recognition in Ireland, but Leman does: it really punches above its weight.'

Ogier becomes the third big offshore firm in Dublin. Long before the recent glut of law firms entering the Irish market, Maples and Walkers were early arrivals. In 2006, Maples became the first: its local office now has 112 lawyers, according to the Irish Law Society. Meanwhile, Walkers' office, which opened in 2010, has 58 lawyers.

Walkers global managing partner, Ingrid Pierce, points to UK and international firms that have opened in Dublin during the past few years. 'It might become overcrowded, and probably already is,' she suggests.

'A lot of firms have gone into the Irish market in a fairly tone-



“ We believed that a Dublin move would be a further step in providing a joined-up service

Edward Mackereth, global managing partner, Ogier

deaf way,' argues Mackereth. 'There's been quite a bit of: oh look, another bunch have come in and made the same mistakes. There's room for offshore firms to thrive in Ireland.'

He develops the point: 'The finance industry in Ireland is very similar to those of our existing footprint. We believe we can add value and perhaps offer a different proposition for clients and employees there. We looked at the critical mass of asset managers, finance expertise, and corporate service providers - Ireland is very impressive in that respect.'

Challenger brand

Mackereth describes Leman as 'a very good challenger brand, which has grown quickly over the last 16 years, but faced predictable challenges in a market which has

become overrun by international firms, most notably in talent retention and growth. It has a very talented workforce and a really good, largely domestic-focused practice.'

Leman, he adds, was looking to widen the scope of that client base internationally while Ogier had been looking for an Irish partner in vain. 'It was a case of us finding each other out,' says Mackereth.

'We spoke to a good number of firms over several years, but had not found the right cultural fit until we were introduced to Leman by a mutual friend. When we met with the Leman team, we introduced ourselves in almost exactly the same way. In terms of cultural alignment, ambition, and the development that both groups wanted, they were very aligned. That became, and still is, the main focus of the merger: making sure that we complement each other's cultures in a way that continues to provide a distinct EVP (employee value proposition) in each of our markets.'

Looking ahead, Mackereth anticipates an increase in the Dublin headcount. 'We will be growing, both domestically and internationally,' he says. 'Within two to three years, it will be broadly similar to many of our other offices - another equal partner, rather than just an outpost, which is absolutely the intention with every office.'

Notwithstanding the new international arrivals, he notes that Ireland is 'still quite a thin market: there are not that many commercial firms and we're currently second division in terms of size. It doesn't take that much to go up to the premier league.'



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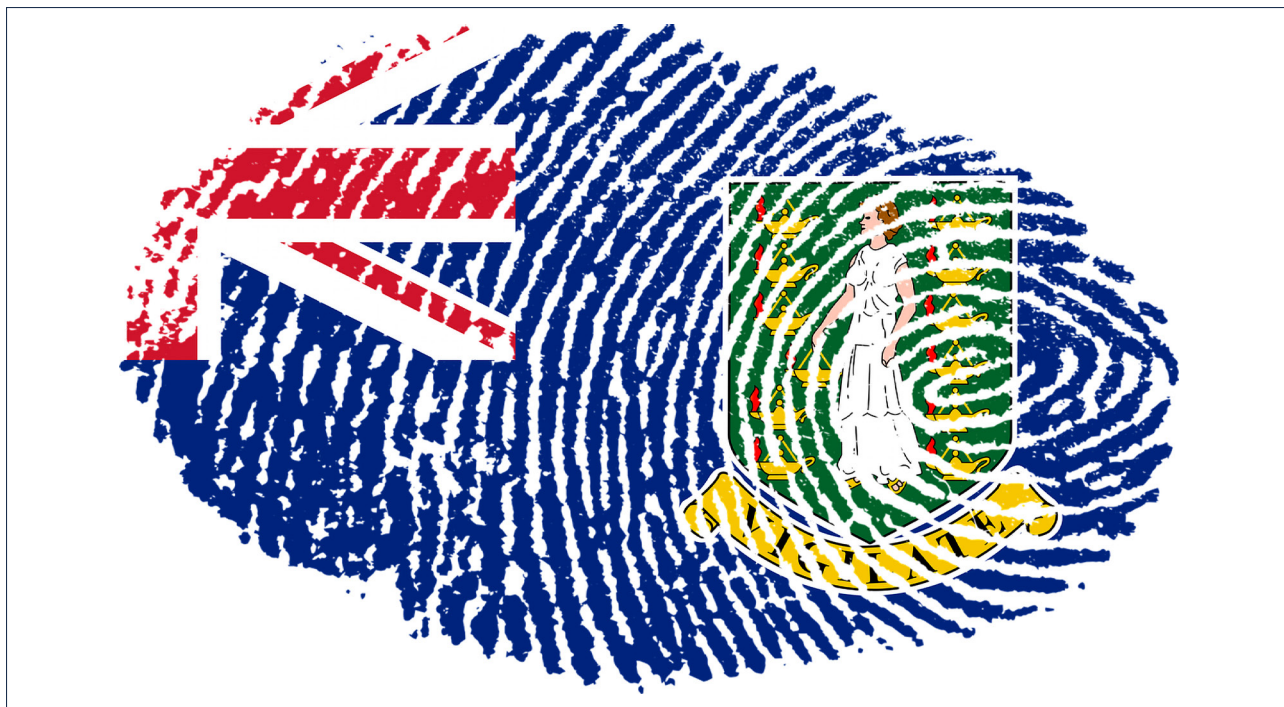
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Turmoil Offshore

Law firms rise above the BVI's 'bad governance' and 'serious dishonesty'



Almost everywhere, the principles of good governance, such as openness, transparency and even the rule of law, are ignored." The verdict of retired English judge, Sir Gary Hickinbottom, in his scathing 946-page report into alleged corruption, abuse of office, misuse of taxpayers' money "and other serious dishonesty" by leading BVI politicians.

Published on 29 April 2022, the report had been instigated by the BVI's outgoing Governor Gus Jaspert. In January 2021, supported by the UK Foreign Office, he appointed Hickinbottom as Commissioner of an independent Commission of Inquiry (the Commission).

After several months of hearings and taking evidence, Hickinbottom did not mince his words,

concluding in his report that the BVI's governance was "appalling bad", and that it was "highly likely" that serious dishonesty had taken place.

But the Territory's woes did not end there. On 28 April, Andrew Fahie, the BVI's Premier since February 2019, was arrested in Miami by the US Drug Enforcement Administration on charges relating to money laundering, conspiracy to import 5kg of cocaine, and planning to assist the Mexico-based Sinaloa Cartel in moving thousands more kilos of cocaine into the United States.

Numerous recommendations

Fahie's arrest came as a further shock to the BVI's 31,000 inhabitants. On 5 May, he was removed as Premier by an

▲ **Corruption, abuse of office, and serious dishonesty by leading BVI politicians**

almost unanimous vote in the BVI's House of Assembly and replaced by Dr Natalio Wheatley. After pleading not guilty to the charges, Fahie now faces a US trial in July.

Among the Commission's 45 recommendations was that UK direct rule should be imposed for at least two years, with the BVI's locally elected House of Assembly and ministerial government being suspended. The UK-appointed Governor, potentially with a local advisory council, would instead oversee reform. The last British Overseas Territory (BOT) to be subject to direct rule was the Turks and Caicos Islands, between 2009 and 2012, when corruption and poor governance were discovered there.

After visiting the BVI in early May, the Minister for Overseas



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Territories, Amanda Milling, said that reforms “must happen quickly.” Local politicians and regional organisations vigorously opposed the recommendation to impose direct rule as Premier Wheatley established a cross-party coalition to lead reform instead.

On 8 June, the UK’s foreign secretary Liz Truss announced that direct rule would not be imposed on the BVI and that the territory’s emergency administration would be given two years to implement reforms to tackle endemic corruption.

BVI: key jurisdiction

As one of the largest and most dynamic offshore centres, the BVI matters: it is a key jurisdiction for every leading offshore law firm. Their local offices help to service the corporate, banking, trust, insurance and insolvency needs of nearly 500,000 foreign businesses incorporated in the BVI. Of all the world’s offshore companies, roughly 40% are BVI registered.

Having the largest team of lawyers in the jurisdiction, Harneys remains synonymous with the BVI and is the second largest employer in the Territory. Ross Munro, who succeeded Peter Tarn as the firm’s global managing partner in January, is sensitive to local sentiment. In terms of Fahie, he says, ‘It was shocking and disappointing. We’ve seen all the stages of grief about that situation playing out.’

On the wider issues, he offers a clear perspective. ‘There’s a strong feeling amongst many residents and citizens that there’s a need for change, updating how parts of government conduct themselves,’ he says. ‘There’s a desire to see improvement because there are some big challenges ahead around public finances.’

The recommendations were ‘within the sphere of possible outcomes’, according to Munro.

‘Two of our BVI partners met Amanda Milling when she was in



Photo: Government of the Virgin Islands

the BVI to meet with community members: their views were heard,’ he says. ‘Hopefully, a solution will be found to bring the standards of the local government up to the standards that we’re used to seeing in the financial services sector - whether it’s disclosing interests and dealing with conflicts or transparency on contracts.’

Independent regulators

In common with other law firms that have Tortola offices, Munro is anxious to differentiate between the problems highlighted by the Commission and the integrity of the BVI’s key regulatory authorities: the Financial Services Commission (FSC), the Financial Investigation Agency (FIA), and the International Tax Authority (ITA).

‘The infrastructure surrounding the financial services sector, primarily the FSC, the FIA, the ITA and the courts, all run independently,’ notes Munro. ‘The FSC is autonomous. Ultimately, it runs itself - whether that’s under a local government supervised by the Governor or directly by the Governor himself. It doesn’t impact its day-to-day operations. It’s an independent regulator, carrying on as usual.’

Munro asks: what did the Commission cover? ‘Largely issues around procurement of

▲ On 28 April, Andrew Fahie, the BVI’s then Premier, was arrested in Miami by the US Drug Enforcement Administration

government contracts, declaration of interests and governance,’ he says. ‘Objectively, it doesn’t in any way impact the financial services sector. The Commissioner explicitly noted the FSC and the FIA as being outside the terms of reference and not requiring any sort of investigation - as we would have expected. They hold themselves to high international standards, which are met or exceeded. It was encouraging that the Commissioner recognised that.’

‘No impact’ on financial services

Conyers chairman Christian Luthi quotes the words of BVI’s Governor: ‘“Nor, I should stress, was [the Commission] an investigation into the BVI financial services sector. I continue to welcome and support the work of the Commercial Court, the Financial Services Commission and the other regulatory bodies in the BVI who continue to operate as normal, acting as they do in compliance with international regulatory standards and a robust English common law framework.”

As a result, Luthi does ‘not expect these events to have an impact on the financial services sector or on our clients. There has been no suggestion that any action will be taken with regard

to the financial services sector as a result of the news regarding the Premier or the report of the Commission.'

Clients, he notes, are 'obviously watching the position closely and it is important that a clear plan is formulated and implemented for dealing with the issues raised by the Inquiry. Such a step would go a long way towards alleviating concern.'

Ingrid Pierce, global managing partner of Walkers, adds: 'For us, it's pretty irrelevant, because institutional clients are not concerned about such matters. They just want to do business in a stable jurisdiction. It's not helpful for the BVI, but I don't think it will have an impact on the international commercial work that we do.'

Bedell Cristin's global managing partner, Tim Pearce, concurs. 'I'm not overly concerned about the BVI's reputation,' he says. 'Because the Commission's report is all about local mismanagement, as opposed to anything the jurisdiction has been used for - big blue-chip international clients who use it for structuring purposes.'

Transparency on beneficial owners

In addition to the Commission's report and recommendations, the BVI has also been impacted by a new law, the Economic Crime (Transparency and Enforcement) Act 2022 (the Act), which was fast-tracked through the UK parliament "in consequence of recent events in Ukraine". It received Royal Assent on 15 March, although some parts of the Act have yet to come into force.

Beyond the Act's provisions to strengthen Unexplained Wealth Orders (UWOs) and amendments to the UK's sanctions framework, it requires offshore companies holding UK property to disclose their beneficial owners.

Long anticipated, the Act introduces a new register of



“ There has been no suggestion that any action will be taken with regard to the financial services sector

Christian Luthi, chairman of Conyers

overseas entities (ROE). Once the ROE is implemented, BVI entities that own UK property will be required to register with Companies House, and identify beneficial owners. Overseas entities who already own land in the UK will be given six months to register their beneficial owners or managing officers. Notably, the register will apply both to future acquisitions and retrospectively to property bought by BVI entities in England and Wales since January 1999, and in Scotland since December 2014.

Its impact extends beyond the BVI. The UK government is in discussions about the Registers of Beneficial Ownership in other British Overseas Territories (including the Cayman Islands, Gibraltar, and Turks & Caicos) and the Crown Dependencies (Isle of

Man, Jersey and Guernsey) to be made public by the end of 2023.

Creating mischief

Lawyers are keen to emphasise their lack of concern. 'There's no real impact for us,' says Pierce. 'Our institutional clients don't bat an eyelid about it.' She suggests that 'clients shouldn't have a particular problem if the government or the regulator with a legitimate interest could access the details of shareholders or beneficial owners.'

But the issue becomes more sensitive, she says, if the register is publicly available. 'Because while it sounds as though it's just creating transparency, it can also create a lot of mischief,' suggests Pierce. 'I'm not sure it's curing the ill which it's designed to achieve. It would not protect the identity of people with a legitimate reason for not disclosing their wealth. For private individuals, I can't see why it's anybody's business.'

Luthi develops the point. 'Offshore jurisdictions have been dealing with transparency concerns for many years,' he says. 'We don't expect it to have a serious impact on our client base. Privacy is just one driver of

the many legitimate and practical reasons individual clients and corporations choose the BVI for international investment and financing transactions, including property ownership.'

At Collas Crill, group managing partner Jason Romer puts the new Act and the ROE in context. 'The BVI is extremely adaptable, always has been and always will be,' he says. 'That has international appeal for lots of reasons not linked to tax evasion. Does it respect the principles around privacy and anonymity? Yes. Do the financial institutions in the BVI have to hold that information? Yes, they absolutely do. Does it have to be published? It looks like it may have to be published going forward if it's used to hold UK property.'

'There's quite a lot of UK property owned through BVI structures - that's a desire for anonymity rather than tax evasion,' he adds. According to estimates cited by BVI Finance, there are currently 11,700 BVI

entities that own more than 23,000 UK properties.

Debate rages

'Herein rages a debate about why does everything have to be public,' says Romer. 'People are entitled to privacy; there are privacy laws. The main benefit is anonymity. Even in small jurisdictions, where people might be moving into Guernsey or Jersey, they still choose to hold their property sometimes in a trust structure because they want anonymity and don't want people knowing their business, or how much they've spent on their house, or how much it's worth.'

Pearce extends the narrative beyond the BVI. 'The public perception of offshore doesn't match the reality,' he says. 'We have registers of beneficial ownership. We don't keep anything secret. The clients we look after don't want to be in the shadows. They're very happy to have their information disclosed, if necessary, because they're not doing anything that is other than

sensible planning and using the international framework to deploy capital into onshore jurisdictions in a way that gives value back to investors.'

A second Economic Crime Bill is anticipated later this year that will allow companies to have only one layer of corporate directors, who must be UK-based. Overseas agents will be prevented from forming UK companies, unless they are subject to a UK-equivalent supervisory regime. Pearce concludes on the offensive. 'The real issue is onshore, which needs to ensure that it's complying with the same rigour and scrutiny that we do offshore,' he says.

Turning to the BVI's future, Munro would like a calm and swift resolution to the issues raised by the Commission. 'I hope that the jurisdiction settles down,' he says. 'The longer it drags out, the greater the scope for further damage. But if decisions can be made and a plan adopted and executed quickly, it shouldn't be damaging in any material sense.'

The BVI has been given two years to implement reforms to tackle endemic corruption ▼



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