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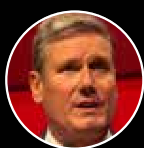
Offshore Report | March 2023

Preparing for opportunities ahead

Crypto: redefining volatility



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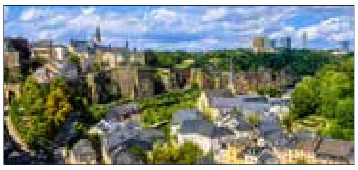

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www.pagesuite.com

Crypto: redefining volatility

As crypto gradually becomes an institutional asset class, offshore lawyers are dealing with the casualties on the road to regulation

▲ **Last November, FTX deposit balances fell by 87% in five days**

Following its dramatic collapse, the lack of due diligence and blatant disregard of red flags at FTX were self-evident to everyone; such is the wisdom of hindsight. The Bahamas-based platform – formerly the world's second largest cryptocurrency exchange – had soared in value to a remarkable $32 billion by 2022 before depositors took fright at rumours of a black hole in its balance sheet: last November, FTX deposit balances fell by 87% in five days, culminating in FTX, its hedge fund Alameda Research and dozens of affiliates filing for Chapter 11 bankruptcy protection.

FTX's former CEO Sam Bankman-Fried, commonly known as SBF, was extradited from the Bahamas to New York. In January 2023, he pleaded not guilty to eight counts of wire fraud, security fraud and conspiracy to commit money laundering. A trial date of 2nd October was set until which time SBF is allowed to live with his parents thanks to a $250m bail package provided by two anonymous individuals who signed as sureties. If convicted, he faces a potential 100+ year prison sentence for what would be one of the largest ever financial frauds.

FTX litigation

"Following the collapse of any exchange, and particularly one where it was so popular and had such a meteoric rise, there are all sorts of implications in terms of litigation that will ensue," says Jason Romer, group manging partner at Collas Crill. "It will be predominantly Caribbean-focused. Many funds have invested and been involved, given where the exchange was based."

Onshore, the principal US law firms advising on the FTX fallout are Sullivan & Cromwell and Quinn Emmanuel Urquhart & Sullivan, alongside consulting firm Alvarez & Marsal and forensics consulting firm AlixPartners. S&C restructuring partner Jim Bromley, who represents FTX, told a Delaware bankruptcy court last December: "We do not trust the Bahamian government." Brown Rudnick is advising the Bahamian government on issues related to the FTX bankruptcy and US regulatory and criminal investigations.

Several prominent offshore firms are also advising on the FTX fallout, although they are cautious in discussing the detail. Among them, Walkers is "acting for the FTX debtors on certain offshore matters," while Collas Crill has "been contacted in relation to that (FTX) problem."

Meanwhile, Edward Mackereth, global managing partner at Ogier says: "We're already getting a lot of inquiries on FTX. I don't think that's going to be the last house to collapse." Conyers' chairman Christian Luthi notes: "FTX is mostly in the US and Bahamas, although they don't have a Bermuda presence, there's been some contamination and there will be some work out of that. Our BVI teams have been involved because of their involvement with Three Arrows. Other jurisdictions are going to suffer more contamination than Bermuda, with potential proceedings in Cayman."

Three Arrows

As regulators in multiple jurisdictions struggle to play catch up with the crypto sector, the fallout from FTX and other crypto casualties continues to keep offshore lawyers busy. Among the most prominent is Three Arrows Capital, a Singapore-based cryptocurrency hedge fund whose liquidation was ordered by a BVI court last June. According to the bankruptcy filings, Three Arrows faces $3.5 billion in creditors' claims. Latham & Watkins is representing Three Arrows in the US bankruptcy while Ogier's Hong Kong partner Justin Davis and BVI-based partner Grant Carroll are acting for Teneo, the BVI court-appointed liquidator of the insolvent fund.

❝ FTX: I don't think that's going to be the last house to collapse

Edward Mackereth, global managing partner, Ogier

Mackereth points to collective action elsewhere in the crypto space, notably 240,000 UK investors in Bitcoin Satoshi Vision (BSV) who have "joined up to bring a £9.9 billion class action lawsuit against four cryptocurrency exchanges in the Competition Appeal Tribunal (CAT)." That action was assisted by Twitter activity, he notes. "The digital asset space is so connected to social media. Litigation being started by tweets raises the prospect of more runs on exchanges, because you'll get 100,000 people reading the same tweet and then taking the same action. It could be very disruptive."

Walkers global managing partner Ingrid Pierce says: "We've been advising in BVI, Bermuda and Cayman on virtual assets service provider regimes, people investing into crypto funds, setting up digital platforms, potentially setting up digital custodians. Some of this activity is really going to drop sharply, because the value of cryptocurrencies has fallen and the number of institutional investors who got in on the act and may be having buyer's remorse. We expect to see a few insolvencies. There will be a ▶

reckoning when lots of people are attempting to withdraw capital at the same time."

The entire crypto sector has received renewed scrutiny in light of the FTX collapse, according to Harneys global managing partner William Peake. "The boom in crypto currencies in the BVI has led to an inevitable surge in cases where digital assets have been misappropriated and/or dissipated through channels connected to the BVI," he says. "The number of cases concerning fraud, misappropriation of digital assets, and digital asset tracing is rapidly on the up. We have been busy with fund vehicles and NFTs targeting this space. More recently, we have seen a rise in contentious crypto and digital asset tracing."

Long road to regulation

Overriding all of the above is a distinct lack of national and international regulation that specifically addresses crypto in all its manifestations. "Ambitious plans to protect consumers and grow the economy by robustly regulating cryptoasset activities have been announced by the government," according to gov.uk. But no timetable for regulations or a new regulatory regime are yet in place.

Noting the absence of global standards for crypto regulation in the context of FTX, the Bahamas attorney general Ryan Pinder said that his country's regulatory regime was sufficient to oversee crypto businesses and claimed that no other regulator could move as quickly as The Securities Commission of the Bahamas had. It's a bold claim.

US federal agencies and regulators – the SEC, the CFTC and the Treasury – have each issued rules and guidance detailing how crypto falls under their respective remits. At the end of March 2023, Binance, the world's largest crypto exchange was sued by the CFTC, which demanded damages and a possible trading and registration ban. The CFTC alleged that Binance offered unregistered crypto derivatives products and that its trading volume and profitability had largely come from "extensive solicitation of and access to" US customers, who had been encouraged to evade compliance controls.

" I don't envy regulators in that space

Jason Romer, group managing partner Collas, Crill

Meanwhile the US Congress has introduced more than 50 bills relating to digital asset taxation, regulatory treatment, classification, stablecoins and central bank digital currencies (CBDCs). Last year, the US Congress also held 15 hearings focused on cryptocurrency and blockchain policy, and President Biden signed the Executive Order on Ensuring Responsible Development of Digital Assets, defining how the US should approach digital assets. But for now, the prospect of new federal legislation specifically targeted at crypto remains distant.

"It remains to be seen how the regulators deal with that sector," says Mackereth. "It's hard to regulate something when the regulations are still in their early stages. Entrepreneurialism of the digital assets may stay ahead of the regulations." Ogier's global senior partner, Rachael Reynolds KC, adds: "Even if it's only a relatively light touch regulatory framework to start with, it's important to have it in place, it's the right way forward."

Romer concludes: "My philosophy would be: enough regulation to protect the vulnerable and not too much regulation to stifle innovation. It's inevitable and right that there needs to be more regulation in the crypto space. But too much regulation will dampen innovation and restrict what ends up happening. I don't envy regulators in that space."

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Hard Labour offshore

After the Tory economic debacle last autumn, Labour's hostile political rhetoric about offshore centres continues. But will it translate into legislative substance?

▲ **Labour is in pole position to win the next UK general election**

"Constitutionally, for so many reasons, what happens in Britain is important for offshore jurisdictions," says Christian Luthi, chairman of Conyers. The trauma and chaos of last autumn's budget certainly resonated far beyond Westminster. The Truss premiership may have lasted only 49 days – from 6th September to 25th October 2022 – but its impact on the UK, and by extension offshore centres, made headlines for all the wrong reasons. Longer term, what an incoming Labour government might do could have more enduring consequences, particularly offshore.

Trussonomics centred on tax cuts, reducing regulation and repealing employment laws to attract businesses and grow the economy. But when her chancellor Kwasi Kwarteng announced large-scale borrowing and equally large tax cuts in a mini-budget for growth on 23rd September, financial chaos ensued. UK gilts (government bonds) dropped precipitously, the pound fell below $1.10 and mortgage rates spiked above 6 per cent.

IMF criticism

Most unusually, the IMF issued a statement which openly criticised Truss's economic policies, asserting that "the nature of the UK measures will likely increase inequality", and urging the UK government to "re-evaluate its tax measures, especially those that benefit high income earners." Within three weeks, nearly all these measures were reversed and Kwarteng was gone. Ten days later, so was the prime minister.

"The Truss/Kwarteng budget had an effect in terms of the overall market confidence and a broader effect in the confidence of Britain and its leadership," says Luthi. "It contributed to a fair amount of chaos in the bond markets, which kept UK lawyers busy. It'll be interesting to see how some budgetary propositions play out. The UK has indicated support for beneficial ownership, transparency issues, and minimum corporate tax – a bit odd for a Conservative government."

Ingrid Pierce, global managing partner at Walkers, adds: "Offshore, there's a lot of concern about the state of the British economy and whether or not the UK is going to continue to be viewed in a favourable light by those who would otherwise put their money into it, and maybe have their boots on the ground. That will definitely have a knock-on effect on work flows and the types of work we're doing."

The relative stability delivered by the Sunak/Hunt team has gone some way to reassure markets over the past six months. "On the upside, there seems to be a lot of potential movement back into the UK," says Pierce. Pragmatism, she argues, should rule the day "and then let's see where the markets flow. If they can crack that and get more inward movement into the country, that will perhaps spur more growth, more optimism."

Labour favourites

According to pollsters and bookmakers alike, Labour remains in pole position to win the next UK general election which must be held by no later than December 2024. What the party might do in government could have potentially significant consequences for offshore centres. Policy commitments remain light – for now. But ▶

much has been revealed through speeches about Labour's potential plans offshore.

Almost a decade ago, the then Labour leader Ed Miliband made his position clear: "A Labour government is not going to have endless consultation and dithering. We are going to give six months to these tax havens to agree to publish a register of beneficial ownership, and if they do not act, we will recommend to the OECD that they are put on a blacklist."

In 2016, his successor Jeremy Corbyn suggested that the UK could impose direct rule on British overseas territories and crown dependencies. He argued that the Conservative government should tell administrations in Cayman and the BVI: "Hang on, you are a government of a British dependent territory, a crown territory, you must obey UK tax law, you must not become a harbour for tax avoidance and tax evasion."

Labour's current leader Sir Keir Starmer has blocked Corbyn from standing as a Labour MP at the next election. Overall, he is regarded as being more moderate, more pragmatic and more electable than his immediate predecessor.

On offshore matters, he and shadow chancellor Rachel Reeves have narrowed their focus: announcing plans to scrap non-dom status in the UK and to prioritise companies paying full UK tax over those registered in offshore centres when awarding government contracts by implementing greater tax transparency, with a company's tax status being taken into account when agreeing procurement contracts.

"Crack down on tax havens"

Although Starmer's language towards offshore centres is less overtly hostile than Corbyn, Reeves' rhetoric echoes some of the same tone. In May 2022, she told the House of Commons: "Labour will abolish the non-dom tax loophole – and we'll clamp down on hidden offshore trusts." In a speech to the Coop conference last October, she said: "We will crack down on tax havens, on offshore trusts, and strengthen the rules in the UK which have allowed the oligarchs to hide their wealth here and launder the murky sources of it too."

How much of this political rhetoric becomes legislative substance remains to be seen. In a newspaper article last April, Reeves wrote: "We would also crack down on the use of hidden offshore trusts that allow people to avoid paying tax here in the UK. And we'd fast-track the publication of the much-delayed register of overseas beneficial ownership of property in the UK, crucial for preventing companies' true owners from carrying out their tax affairs in secrecy." That register was, of course, launched by the British government last August.

❝ Constitutionally, for so many reasons, what happens in Britain is important for offshore jurisdictions

Christian Luthi, chairman, Conyers

Not updated since 2017, Labour's Tax Transparency and Enforcement Programme pledged a Register of Trusts: "Trusts are a key vehicle for tax avoidance and illicit financial flows. Labour will create a public register of all trusts showing their assets and beneficiaries. We will look particularly at trusts which transfer the residence of their trustees offshore, and those tax avoidance schemes involving trusts which are disclosed to the HMRC under the current law."

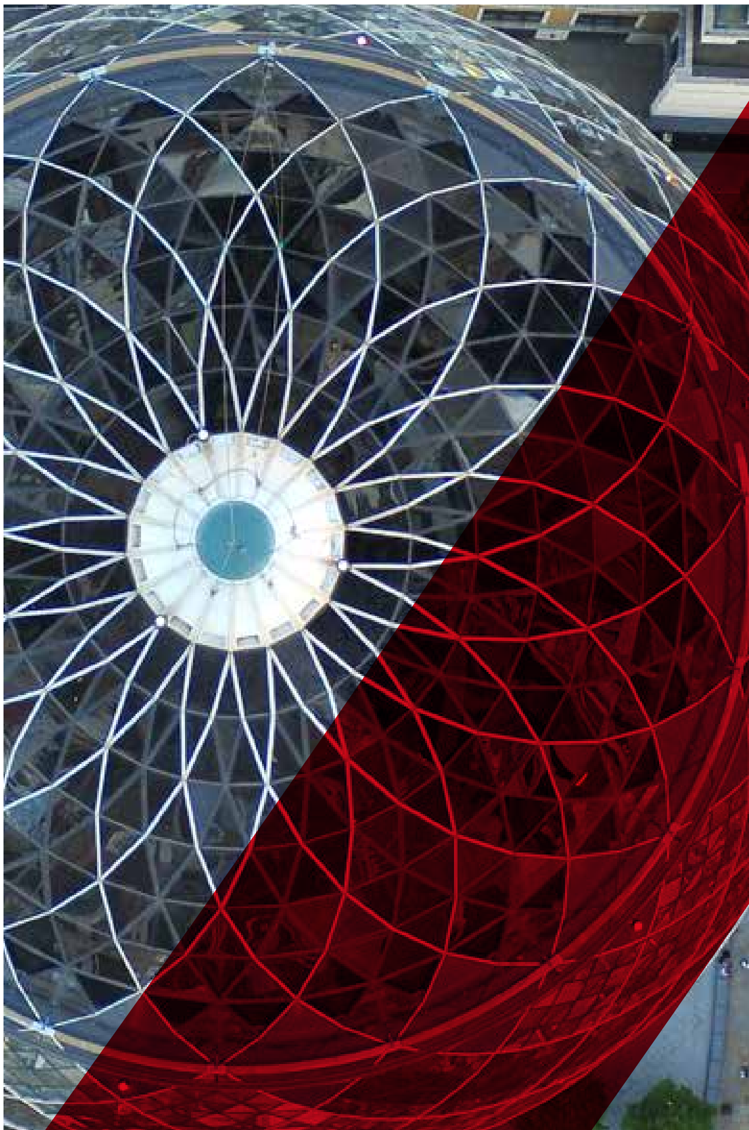
Pierce says: "Frankly, if a Labour government gets in, they'll have other problems to worry about. Hopefully the UK will be focused on trying to recover its place as a financial centre (and a very good one), and try and attract the wealth it needs to attract from overseas investors. From an offshore perspective, we know it's going to be popular to go after lower tax jurisdictions, but Cayman, BVI and Bermuda are golden overseas territories for the UK – they have something to offer and something to return."

Ogier's global managing partner, Edward Mackereth, prefers to focus on what the UK has to offer. "Our strategy has been predicated on the world becoming increasingly divergent with bigger ups and big downs on a regional basis," he says. "We've done a lot of diversification in where we are, what we offer, and how we offer it.

"M&A activity is going to be suppressed, primarily hitting our Channel Islands practices. But if currency rates remain, UK PLC assets will become very attractive: people will see through the very short term, topsy turvy nature of the UK and be up for buying them. I expect quite a lot of M&A activity towards the back end of 2023." There will be a correction, he suggests. "You'll get a closer correlation between value and price on assets, which may involve stock markets going up in H2 2023 as people realise how much underpricing has been baked in."

" We know it's going to be popular to go after lower tax jurisdictions, but Cayman, BVI and Bermuda are golden overseas territories for the UK

Ingrid Pierce, global managing partner, Walkers



Great Expectations

The best of times, the worst of times: offshore firms have seen it all before. So how are they helping clients to deal with hard times and prepare for better times ahead?

Russia's war of aggression in Ukraine continues to overshadow the global economy, creating a significant drag on many investment and commercial decisions. Currently, there is no foreseeable end: both sides remain committed to the fight, making the prospect of a negotiated peace somewhat distant. According to the OECD, the war has been a "massive and historic energy shock" to the markets. Although wholesale energy prices have steadily eased in recent months, the protracted struggle has become a stalemate – at least for now – as inflation and the coordinated response to it become the main enemy of the markets.

Globally, economic growth slumped to 3.1% (OECD) last year although the IMF suggests the figure was 3.4%. Forecasts for 2023 vary more widely: 1.7% (World Bank), 2.6% (OECD) and 2.9% (IMF).

In response to the surge in energy prices, interest rates have been repeatedly hiked to mitigate the inflationary consequences. Deal activity dropped off a cliff, which has affected firms offshore as much as their onshore counterparts. The total value of global M&A slumped by 36% year-on-year in 2022 to nearly $3 trillion, although deal volumes fell by only 12%, which suggests some resilience among dealmakers. Even more adversely affected, in both volume and value, were IPOs: global IPO volumes fell by 45% last year, while proceeds were down by 61%, according to EY, with Europe's IPO activity down by a remarkable 78%.

Market volatility

The first quarter of 2023 was not much better, summarised by a recent Bloomberg headline: 'IPO Market Moves from Pessimism to Optimism to Utter Confusion'. As high inflation inevitably led to higher interest rates, market volatility and a weak macroeconomic outlook are still impacting company valuations. The response of central banks, notably monetary policy tightening by the U.S. Federal Reserve, has had significant repercussions: hitting the brakes to tackle resurgent inflation has arguably precipitated renewed turbulence in the banking sector.

Labelled by the FT as 'the most dramatic moment in global banking since the financial crisis of 2007-8,' the shotgun marriage of UBS acquiring Credit Suisse in a £2.6bn ($3.25bn) deal was secured only hours before financial markets opened on Monday 19th March. Davis Polk & Wardwell and Sullivan & Cromwell, respectively, took lead roles for UBS and Credit Suisse.

Notably, the Swiss regulator Finma ordered the write down of $17bn of Credit Suisse's AT1 bonds to facilitate the deal. US distressed debt investors are now preparing to fight the Swiss government over its decision: Quinn Emanuel Urquhart & Sullivan and Pallas Partners are among the prominent law firms representing bondholders.

Meanwhile, the Credit Suisse debacle came hard on the heels of the Silicon Valley Bank collapse in the US and HSBC's £1bn rescue of its UK operations. Further signs of contagion among investors include Deutsche Bank whose share price fell in late March following a spike in credit default swaps, as concerns about the stability of European banks persist.

Interesting times

Offshore law firms therefore operate in interesting times. So how do they see the current position?

According to Jason Romer, group managing partner of Collas Crill, "It's been a roller coaster since 24th February 2022 – the day the war started." Christian Luthi, chairman of Conyers, notes: "The year ahead will be one of caution. Post-COVID, we were all budgeting quite aggressively, but Ukraine and high interest rates weren't anticipated. In North America, the capital markets have been slow, the debt markets have been sluggish and mergers and other big transactions less frequent."

Ingrid Pierce, global managing partner of Walkers, summarises the overall sentiment among offshore firms. "It's a time of great uncertainty," she says. Where there's uncertainty, people don't want to take action. They're cautious about how much money they put at risk. We're seeing people doing a lot more spreading of risk."

Ukraine and energy are two interlinking issues, she adds. "They have definitely had a knock-on effect on what people are doing and where they're doing it. The corollary: there's a ton of capital sitting on the side-lines waiting to be invested. Some are still investing. We've had a few M&A deals that have closed recently. We didn't necessarily know whether they would but they did. So, people are still fairly bullish."

" We're seeing another liquidity crunch which is reminiscent of 2008-9

Rachael Reynolds KC, global senior partner, Ogier

William Peake, who was elected as the new global managing partner of Harneys in January 2023, outlines what effect this is having on his firm's key practice areas: "Inevitably, storm clouds are beginning to gather and we have seen a noticeable uptick in distressed scenarios where a credit crunch is causing companies to seek urgent legal advice," he says. "The court lists in all our key jurisdictions are starting to get busier, which is typically a portent to a biting recession."

Many corporates, he notes are "looking to refinance long term debt in response to interest rate rises, although high profile defaults, particularly In Asia, have stalled the debt capital markets." He also points to "changing risk appetites" leading to "the rise of alternative credit providers (such as credit funds and family offices) playing a more central role in traditional debt markets which are usually dominated by international investment banks."

"Big rise in insolvency and restructuring"

Deal work for clients in M&A, debt issuance, private equity and funds is critical to the bottom lines of most offshore firms. But while much of this activity has been either flat or more often, on a downward trajectory over the past year, restructuring, insolvency and litigation have become busier. Notably, as part of its major restructuring last September, Credit Suisse sold its offshore Credit Suisse Trust (CST) businesses in Guernsey, Singapore and the Bahamas to the Bermuda-based Butterfield Bank, while the law firm Gasser Partner acquired CST's Liechtenstein business.

"There's going to be a big rise in insolvency and restructuring related work: retail, hospitality, or digital assets," says Edward Mackereth, global managing partner at Ogier. "You could have a pretty marked correction in that asset space." Rachael Reynolds KC, global senior partner at Ogier, adds: "Our global restructuring team is now 100 strong. We expect a rise in activity, particularly in Asia, where we have also seen a continuing stream of take private based/de-listings from the US exchanges. A real increase in enquiries and restructurings – funds, corporate, and trusts."

Even before COVID, everyone was talking about a wave of restructuring, but it didn't really happen, says Luthi. "That wave is going to come, it's just been put off because people don't want to lock in losses and there has been money available, cheap money," he says. "Now money is expensive. What's going to happen when everyone comes back to the refinancing well? We're expecting more restructurings." Pierce concurs: "There will undoubtedly be liquidity issues – that's going to cause tightening, and then some insolvencies. On the corporate side, that's going to increase."

Peake anticipates "an uptick in BVI, Cayman and Bermuda restructuring and insolvency work as companies continue to struggle during the global slowdown." He adds: "We have seen more work for companies in the BVI, Cayman and Bermuda affected by solvency issues in the PRC. We have had a number of matters including advising on possible insolvencies which have not yet reached court, but that we anticipate will in 2023."

The property crash in China has notably boosted instructions offshore. "There has been a marked increase in pre-insolvency restructuring advisory work particularly in relation to debt issued by China real estate companies, many of which are Cayman incorporated vehicles listed on the Hong Kong stock exchange," says Peake. "This growth is a direct consequence of the well-publicised distress in the China property market. We are also seeing a trend towards Chinese restructuring in instances where PRC companies are massively indebted and defaulting on their bonds."

Cayman disputes

Distressed situations often spread beyond the bankruptcy court. Mackereth notes: "A real fallout is inevitable: oil and gas, Russian money, Asian issues and liquidity, that all comes together in a perfect storm." Peake summarises the impact on disputes work: "We continue to see a healthy flow of shareholder disputes and distressed fund scenarios which are typical consequences of sustained macro-economic headwinds."

" Storm clouds are beginning to gather and we have seen a noticeable uptick in distressed scenarios

William Peake, global managing partner, Harneys

Reynolds broadens the disputes horizon. "We are seeing another liquidity crunch which is reminiscent of 2008-9," she says. "This time it's due to the higher debt levels, and the tapering of central banks liquidity support. The difference is that this time we have been expecting it. On the company side as governments have withdrawn support, liquidity becomes a big issue. Once there's no short-term ability to access money, people get very anxious and litigation starts on the restructuring side.

"We've had nonstop acceleration and growth in disputes since 2013. With such a large focus on restructuring and insolvency, it's just getting busier and busier. We have 33 DR partners globally. In Cayman, we have a DR team of 30 making us one of, if not the biggest disputes team there. Hong Kong is also very strong because of Asian work coming through and the symbiotic relationship with Cayman."

Romer notes: "Heading into recessions, unfortunately, that's when you see a lot of litigation happening. We've been really busy with that throughout. Since 2008, the litigation wave, as we've experienced it, hasn't slowed down. For the sake of society, I hope it doesn't get too much worse, but the next couple of years will be tough. When you have a recession and stock markets and underlying investments not performing well, you also get a lot of trust litigation. It's a double whammy because you've a difficult period in terms of recessionary challenges and high interest rates, but also that generational shift in a private client context, which causes huge frictions in terms of the dynamics between one generation and the next."

Advisory work in fair value disputes relating to Section 238 of the Cayman Islands Companies ▶

Act is a mainstay for several offshore firms. It gives shareholders a statutory right to dissent from the merger of a Cayman Islands incorporated company, and to be paid a judicially determined fair value for their shares instead of the merger consideration being offered by the merging company.

In Cayman, Pierce says: "There are still a lot of Section 238s, also trust work – on the private trust side and the disputes side." Romer points to his firm's Section 238 practice as going from strength to strength. "We recruited seven new lawyers last year into that litigation team, we've got two more in the pipeline joining – that's huge growth in one team of the business," he says.

Trusts work is seeing both restructuring and disputes. "In private client, we have had a number of multibillion structures involving trusts needing to restructure to work around issues in parts of the structures, particularly involving oil and gas, or in retail and hospitality, and to future proof the structures," says Reynolds. "We have also seen restructurings around the need to modernize trusts and make them more philanthropic – which is a strong theme in our high-net-worth, next gen families whom we advise."

Romer points to what he describes as "the pinnacle of what the offshore market does" – the Z Trusts case in Jersey relating to an insolvent trust. "It's the first time the Privy Council has ever looked at that combination of trust law and insolvency law, where our two core strengths come together: insolvency and restructuring, and private client work."

❝ Heading into recessions, unfortunately, that's when you see a lot of litigation happening. The next couple of years will be tough

Jason Romer, group managing partner, Collas Crill

BVI's legal reputation intact

For Bermuda-based Conyers, the Caribbean jurisdictions are paramount. "We tend to go where the US market goes – in Bermuda, and to a large degree in Cayman and BVI," says Luthi, pointing to the "lack of US activity" as being more influential than other factors.

"One has to view with a degree of dismay what happened (in the BVI)," he says. "The swift reaction of the UK government was good and it was important that both the Governor and the Commission of Inquiry concluded the various issues uncovered did not involve the financial services sector. The new government has a lot of work to do to fulfil the undertakings given to the UK. They're making progress, but they're not out of the woods yet by any stretch."

Pierce says: "Institutional clients that use the jurisdiction haven't batted an eyelid, they've carried on. What they really want to know is that there are good providers and that things work, and you've got a good judicial system. That's the bottom line."

In terms of the BVI's "local difficulties", she adds: "It was important for us to feel confidence in the jurisdiction and to ensure that we were going to continue to invest there and that it is robust, not just for clients, but also robust for us as a business. We've been comforted to a great degree by the fact they've grasped the nettle and they're trying to turn things around locally, but also that users of the jurisdiction from outside are still continuing to invest.

Luthi points to the numbers of annual incorporations: Bermuda 1-2,000 incorporations a year, Cayman 12-15,000, and BVI, historically, 25-40,000. "BVI numbers are down (around 15,000 companies were incorporated in the first half of 2022 compared to about 19,000 in H1 2021), but this is still pretty robust compared to other jurisdictions. Our view is the reduction is largely driven by reduced transactional volume, particularly out of Hong Kong.

"We've been very careful to maintain our client quality in BVI, and we had a good year in BVI in 2022. But as a jurisdiction, they need to continue with reforms they've adopted and fulfil the undertakings they've given."

He is keen to emphasise that "the legal credibility of the jurisdiction and the commercial court in BVI remain sound – they're still getting some very sophisticated cases being tried there. You don't ▶

see people running away from setting-up BVI structures or trying cases in the BVI because of what's happened – that does speak to confidence in BVI financial services, the judicial system and the rule of law there. While there's a lot going on, it is a good jurisdiction for us and an important one for our global strategy."

Romer adds: "In terms of opportunities, we still see, particularly through our BVI practice, quite a lot of Chinese investment into Africa, and outbound investments from the Middle East. Mining and real estate are the two areas we've been most closely involved in through the BVI practice."

Growth

Mackereth summarises the overall picture at Ogier: "All our offices have grown their top line income." Since the merger last May to form Ogier Leman in Ireland, "Dublin has been growing fast: with a pretty aggressive set of budgets, they're hitting them," he says. "The Channel Islands are steady, while the Caribbean jurisdictions are strong, because North America and LATAM are leading the way. We've had a very good year in relation to both those regions, which we expect to last through H1 2023.

"Our Asian practice, in particular, Hong Kong – despite very testing conditions – has also grown. Even if the headline growth rate in China is low, or even zero, the amount of legal and regulatory work that's going to come out of China will be much greater. We're expecting much more fundraising to come back in Asia, particularly in Hong Kong. We'll continue to see fundraising being structured through Cayman."

Luthi is more circumspect. "Hong Kong through offshore vehicles has been slower," he says. "The amount of capital raised on HK markets is significantly lower. We are hopeful for a gradual resurgence and that direct investment into China will increase over the next few years, but there is a high degree of geopolitical uncertainty right now. We're still long on HK, but don't see a flood coming. The HK government needs to win back the confidence of foreign investors."

He points to stronger potential elsewhere. "The role for offshore and the case for offshore in the Asian market still remains very good – Western users and sophisticated institutions are going to want to continue to use offshore services," he says. "Cayman, Bermuda and BVI – the case for those jurisdictions in Asia remains strong. It will gradually come back. However, we're very encouraged by our corporate teams' performance in Cayman and BVI."

Insurance in Bermuda remains solid, he adds. "We've seen renewed interest in captives with some of our larger groups looking at how they can structure their affairs to take on some of that risk and lower the impact of very high rates." Cayman, he notes has been very strong. "We've seen good accretion of incorporations. The reduction of Asian work has been compensated by a reasonable amount of activity from North American markets. They've offset one another. The workflow has been reasonably good – a function of us getting a bit more market share."

Pierce offers a different perspective at Walkers. "America is still very busy," she says. "Cayman is probably the busiest and we offer the Cayman product from our offices across Europe and Asia. Singapore is busy; they face the Southeast Asian market and they also get some of the China market. It has been a beneficiary of some work that was done in Hong Kong, but it's early days. Hong Kong is resilient: they are doing lots of disputes work."

She notes that private equity has "not slowed down particularly" adding that "funds are not necessarily through their investment period, or they might have to extend it. The bottom line is: they have got to invest, so they will find deals. Some big houses are looking to do more retail type fundraising, and putting time, energy and money into setting up new arms targeting retail investors – not a space they've traditionally played in."

Size and market share

Now in her eleventh year as global managing partner, headcount growth has certainly been a consistent feature of Pierce's time

" There will undoubtedly be liquidity issues: that's going to cause tightening, then some insolvencies

Christian Luthi, chairman, Conyers

in charge at Walkers. "According to people who count lawyer numbers, we are now the number one offshore firm by lawyer numbers," she says. "We're not going to grow for the sake of it, it's because the work is there and we need to service it. I thought we were at a pretty optimal size a few years ago; now we're a third bigger. In jurisdictions where we're still a challenger, we need to improve in size and take more market share."

Growth in the Channel Islands by Caribbean-based firms has been notable in recent years. Maples, which opened a Jersey office in 2018, increased its lawyer headcount in St Helier by nearly 50% in 2022. Meanwhile Walkers continues to grow both its Jersey and Guernsey offices. "In the Channel Islands, we've almost tripled in size in the last five years," says Pierce. "That's great, but not good enough, we still need to do more. In Bermuda, I'm super pleased with the institutional quality work we're doing for clients when we didn't even exist there several years ago. We want to do more and be full service there for financial services."

Harneys is seeing increased activity in Asia in both distressed and non-distressed scenarios, according to Peake. "In particular, we have been advising on a number of homecoming IPOs of Chinese companies which are listed in the US and seeking to list or re-list in Asia," he says. In M&A, he points to "a revival of interest in sectors which were more badly impacted by the pandemic, such as leisure and tourism, with buyers sensing that even in an inflated market there is value in assets that have not rebounded to pre-pandemic levels".

As a result of low equity prices leading to an increased appetite for mergers, he anticipates more de-SPAC transactions and, in terms of sectors, "we expect there will be more equity capital markets activity in healthcare, TMT and life sciences." He identifies the introduction of Chapter 18C by the Hong Kong stock exchange at the end of March 2023 as a potential boost to the number of specialist technology companies looking to list in Hong Kong.

Offshore war for talent rages on

Reports that the war for talent is over are much exaggerated as the battle rages to find the best lawyers to meet client demand and deliver a platform for growth

"There's no shortage of work – far from it," says Jason Romer, group managing partner of Collas Crill. "The real challenge, as it is for all firms right now, is capacity and attracting brilliant people. The war for talent rages on." That war is being fought on many fronts – from graduates to partnership, firms are trying to boost their headcount to meet demand and win more work. According to a recent survey from legal reputation management consultancy Byfield, most UK managing partners say that recruitment and retention are top of their list of business concerns with 95% of them citing the war for talent as a major concern.

First and foremost, offshore firms have to compete (or at least appear to be reasonably competitive) with salaries on offer from the likes of Cravath, Latham, Kirkland and Sullivan & Cromwell. The London offices of nearly 30 US law firms now offer NQ salaries starting at £130,000 and rising to £179,000 – all of them above the magic circle rates, which range from £107,500 at Linklaters to £125,000 at Clifford Chance and Freshfields Bruckhaus Deringer.

It is self-evident that multiple pressure points are affecting City law firms: compression in the middle ranks, a downbeat business climate, high inflation and a strong dollar that gives an edge to the US firms who compete with them for talent in London by offering stratospheric NQ salaries. All of this serves to put pressure on both costs and margins.

"Historically, offshore firms could compete with City firms in terms of salary," says Christian Luthi, chairman of Conyers. "The numbers out of New York are pretty staggering. But the UK tends to be more in line with offshore numbers, although US firms are forcing UK firms: that's a bleed from the US." He predicts: "We're going to see salary expectations increase. Clients' ability to happily pay inflationary fee increases, the appetite may not

" We are the net beneficiaries of the war for talent because of our culture

Rachael Reynolds KC, global senior partner, Ogier

be there. Firms will have to reckon with increasing wages and clients tightening belts."

Happy employees

At Walkers, global managing partner Ingrid Pierce offers the following critique. "We don't focus much on the financial health of other firms, because it doesn't change what we do,' she says. "We just want to make sure that we're doing institutional work for quality clients at a good margin, and that people are happy doing it. If we can succeed, then we've got happy employees, more retention, and we can provide value to our clients."

How does she calibrate the appropriate salary levels to attract the right talent? "What's relevant is: are we on market or above market in getting the talent we need to do what we need?" she says. "You know very quickly if you're not on market, because you won't be able to hire the people you want. At bonus time, people will say thank you very much and leave."

For a firm to function well, she argues, "people have to want to be here and be excited by the prospect. It's not easy to hire the best people all the time. We've been very fortunate in being able to hire the people we wanted and keep them for the most part. Some have chosen, particularly after the pandemic, a completely different path – not to go to a competitor, but to do something totally different in life. You have to start again: keep renewing and refreshing. We hired 16 associates into our Cayman team, just in funds. Other teams have heavily recruited too – in particular, in the regulatory space."

Ogier's senior partner Rachael Reynolds KC adds: "We feel we are the net beneficiaries of the war for talent because of our culture. It's taken a long time, marking ourselves out as having that strong cultural investment. In looking at competitors and laterally, we've seen people join because of the investment in people and our training and career development programme. Once we've got people in from competitors, we learn a lot about what we're perceived as doing right, and what we could do better – and we try and learn from that."

Junior talent

Luthi provides detail at a granular level. "We haven't had much difficulty in targeted lateral hires," he says. "The bigger war for talent is in getting junior talent to come out of London and elsewhere. In BVI and Cayman, they are largely expats: when they can't see their families, that becomes a big issue. Cayman less so because there are more direct flights to the UK, in particular. BVI, it's been a problem because there are multiple flights they have to go through (although we are excited that a new direct route from Miami will be implemented in the summer of 2023). That's made recruiting more challenging.

"Where we've made targeted lateral approaches, we've been well received. But in the mid-levels and juniors, it's more of an issue in jurisdictions where the legal talent is predominately expat. In Bermuda, we've spent a lot of time investing in local talent: we've done well in terms of retention and turnover. That said, there's competition for those people. Over the last five years with Walkers and Carey Olsen coming in, they were taking a lot of people, and Appleby particularly, suffered. In terms of recruiting, there's no question that the newcomers have had an impact. But we've retained all the people we want to."

The lure of Luxembourg

Mourant joins Ogier and Maples in Europe's leading funds hub

▲ **Several major companies, such as Amazon, Skype and PayPal, have chosen Luxembourg as their European HQ**

Luxembourg is synonymous with funds – its investment funds industry ranks as the largest EU fund domicile jurisdiction and the second largest globally with €5.3 trillion in assets under management. It has also developed into a major European hub for private equity funds: Luxembourg's early implementation of the Alternative Investment Fund Managers Directive (AIFMD) was the initial driver, followed more recently by Brexit. Meanwhile, several major companies, such as Amazon, Skype and PayPal, have chosen it as their European HQ.

Historically, local firms such as Arendt & Medernach and Elvinger Hoss Prussen dominated the Luxembourg legal market. Having decided to open there more than 20 years ago, several magic circle firms have since established themselves as strong competition to the local elite: Allen & Overy, Clifford Chance and Linklaters.

The further post-Brexit growth of Luxembourg as a funds hub has seen another wave of law firm openings since 2020, including Addleshaw Goddard, White & Case, and Debevoise & Plimpton. According to Pierre Gramegna, Luxembourg's finance minister, Brexit proved to be a catalyst for more than 60 companies—predominantly asset managers, investment companies and banks—to move all or part of their operations to Luxembourg.

Local acquisitions

Pre-Brexit, two offshore firms had already planted a flag in the Grand Duchy. Ogier opened a local office in 2012, followed by Maples and Calder, which supplemented its pre-existing fund and fiduciary services offering in Luxembourg by adding legal services in 2018.

Last December, Mourant announced that it would be joining Ogier and Maples as the latest of the offshore elite to have a Luxembourg base. This was achieved through two acquisitions: LexField and its affiliated governance services business, FideField. Mourant stated that the move was aligned with its multi-disciplinary growth strategy, enabling it to provide clients with legal, corporate and entity management services from Luxembourg.

A boutique practice, LexField specialises in four areas: investment funds, PE, M&A and private wealth. Since its launch in

2009, the firm has built a strong reputation for its work in the Luxembourg corporate structuring aspects of cross-border sponsor-led M&A. LexField's 13-strong team has moved to Mourant. Meanwhile, the nine-strong team from FideField, which provides entity management services to corporate and financial services clients, has also joined Mourant.

According to Mourant's global managing partner, Jonathan Rigby: "We've spent several years getting to know the leadership team at LexField and FideField. There's a close strategic and cultural alignment between our businesses and we're delighted to be joining forces in Luxembourg. The LexField and FideField teams have a reputation for delivering the highest levels of service in law, corporate services and entity management."

> *" We've spent several years getting to know the leadership team at LexField and FideField*
>
> ***Jonathan Rigby, global managing partner, Mourant***

"Not the easiest market"

Walkers global managing partner Ingrid Pierce says: "Luxembourg is a great place for those who have been there for a long time and do well out of the jurisdiction. We consider new places from time to time. But for European investors, we have a great solution in our Irish product and offering – it hasn't deterred our clients who use us in multiple jurisdictions from using our services because we're not there. We occasionally work with firms in Luxembourg when our clients need that service, it hasn't been as imperative or big enough to warrant us doing anything about it."

So, what has Ogier's experience been? "It's not the easiest market to compete in: a small place with strong demand for talent," says Edward Mackereth, global managing partner at Ogier. "The combination of having the traditional funds sectors like the Channel Islands and Cayman, and through that the US, with the combination of Dublin and Luxembourg is pretty powerful."

He adds: "The disputes side in Luxembourg is going to be increasingly significant. Luxembourg is probably 10 years behind Cayman in terms of end-of-life fund disputes. That's been keeping the Cayman dispute resolution fraternity very busy for the last decade. I can see that happening in Luxembourg, which has high growth opportunities."

> *" It's not the easiest market to compete in: a small place with strong demand for talent*
>
> ***Edward Mackereth, global managing partner, Ogier***

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