



## In Your Court: Offshore Dispute Resolution Review - December 2019

Insights - 10/12/2019

Welcome to the last edition of In Your Court of 2019. This past year especially has been one of the busiest for Dispute Resolution in the firm's history, and we have been involved in a broad range of large, complex contentious cases.

The increase in the variety of work has been matched by an increase in the volume of instructions across the board – and our team has grown and developed to meet that demand, with [Jennifer Fox](#) joining the partnership, the arrival of [Daniel Mitchell](#) and [Katherine Bradley](#) in our BVI office, and the promotions of [Edwin Gomez](#) and [Michael Snape](#) in our Hong Kong office. Our Cayman team in particular has tripled in size over the last two years. We are also ensuring our team's skills and knowledge are market leading, with [Marc Kish](#) the latest to graduate INSOL's prestigious Global Insolvency Practice Course.

### Recent legal trends in Dispute Resolution in the Cayman Islands

In previous years we saw a few particular areas of major interest emerge, but the past year has been a year of wide variety. This has been one of our busiest years for dispute resolution and we and other Cayman lawyers have been involved in a broad range of large, complex contentious cases, including commercial litigation, restructuring and insolvency, trusts, regulatory fields, professional negligence cases (both for plaintiff and defendant), proceeds of crime cases (for institution and for customer) and other contentious disputes. We are also seeing the continuation of disputed valuation cases in connection with the squeeze-out of minority shareholders of Cayman companies – usually to facilitate a company's subsequent public offering in China.

Read more of the Q&A from Jennifer Fox here: [Recent legal trends in Dispute Resolution in the Cayman Islands](#)

### Chief Justice of the Cayman Islands confirms and expands upon the

## 'standard directions' in section 238 proceedings

In a decision that serves as a clear warning to companies seeking to limit their discovery obligations in proceedings brought under section 238 of the Companies Law (2018 Revision) (the "**Law**"), the Chief Justice of the Cayman Islands has handed a group of dissenting shareholders a significant victory in what will likely become the benchmark for future directions orders in section 238 proceedings in the Cayman Islands.

Ogier represented a group of dissenters comprising over 82% of the total dissenters by number of shares (the "**Dissenters**").

Read more of the briefing from our team here: [Chief Justice of the Cayman Islands confirms and expands upon the 'standard directions' in section 238 proceedings](#)

## From in-house to private practice, onshore to offshore: Q&A with Associate Bryan Little

[Bryan Little](#) recently joined Ogier's dispute resolution team in Cayman. He has experience working in London, Guernsey, and Cayman and studied at the Cayman Islands Law School. In this Q&A he gives insights into life and work across these different jurisdictions and his experience moving from in-house to private practice.

Read more of the Q&A from Bryan Little here: [From in-house to private practice, onshore to offshore](#)

## Does your firm have an effective relationship with the JFSC?

As part of the JFSC's risk-based approach following its restructure of Supervision, registered firms are experiencing an increased number of visits from the regulator and greater focus on issues central to the JFSC's regulatory objectives. It is therefore crucial that firms and their senior management understand how the regulator expects them to engage with it.

Read more of the article from Daniel Maine here: [Does your firm have an effective relationship with the JFSC?](#)

## Slowly getting to grips with unjust enrichment and Jersey's legal hot potatoes (CMC v Forster)

Private Client analysis: This long-running fraud case illustrates the difficult task that the Channel Island courts sometimes have in comparing and distinguishing between developed principles of English law and foundational elements of the customary law of the islands which borrow from French and other civilian law jurisdictions.

It tackles two 'hot potatoes' in Jersey law. The first is the question of the rights between

wrongdoers to claim an indemnity or contribution outside of the scope of the limited statutory scheme between joint tortfeasors and, secondly the extent and nature of the doctrine of unjust enrichment in Jersey law. Nick Williams, partner, at Ogier in Jersey, comments on the case *CMC v Forster and others* [2019] JRC 202].

Read more of the article here: [Slowly getting to grips with unjust enrichment and Jersey's legal hot potatoes \(CMC v Forster\)](#)

## The limits of audit: public perceptions and legal realities

### **Patisserie Valerie**

Patisserie Valerie entered into administration at the start of this year following the discovery of fraud within the company. It is thought that inflated profit margins and sale figures and thousands of false entries in the company's ledgers caused the company's accounts to be overstated by approximately £94m. These factors were not identified by Grant Thornton when it conducted its audit. This was despite the fact that suspicions were raised by HMRC over two years ago.

Read more of the article from Oliver Passmore and Alex Horsbrugh-Porter here: [The limits of audit: public perceptions and legal realities](#)

## The right of privilege against self-incrimination: Volaw v Comptroller of Taxes

A recent Privy Council decision relating to long-running Jersey proceedings (Volaw –v- Comptroller of Taxes [2019] UKPC 29) provides clarification on the extent to which a party to an action may resist disclosure notices from authorities by utilising the right of privilege against self-incrimination.

Read more of the article from Damian Evans here: [The right of privilege against self-incrimination: Volaw v Comptroller of Taxes](#)

## The solvency test in Guernsey: are you sure your company is solvent?

### **What is the Guernsey solvency test?**

The solvency test, found in section 527 of the Companies (Guernsey) Law 2008 as amended ("the Law"), is used to determine whether a Guernsey company is solvent. For non-regulated companies, it is a two-part test. For regulated companies there is a third part to the test<sup>[1]</sup> which concerns compliance with the solvency requirements imposed by their specific regulatory regimes. The test is cumulative, meaning that a company is insolvent if it fails any applicable part of the test.

Read more of the article from Bryan De Verneuil-Smith here: [The solvency test in Guernsey: are you sure your company is solvent?](#)

## About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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