



## Spotlight on Asia: offshore dispute resolution update

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Ogier's Dispute Resolution team in Hong Kong has undergone significant growth in response to increased client demand in Asia for British Virgin Islands (BVI) and Cayman Islands law services.

Advising across the spectrum of commercial litigation and contentious restructuring on both laws, our Hong Kong team provides Asia-based clients with advice in their own time-zone in Cantonese, English, Japanese or Mandarin, while also working very closely with Ogier's award-winning teams on the ground in the BVI and the Cayman Islands to provide a round-the-clock service.

Meet the partners in our Hong Kong Dispute Resolution team and read our latest insights into offshore litigation in the Asia region. For further information please reach out to any of the contacts below.

### Meet Ogier's Dispute Resolution partners in Hong Kong

New partners Justin Davis and Michael Snape and Head of Dispute Resolution in Asia Oliver Payne share insights into their professional backgrounds and market trends.

### Snapshot: arbitration in the British Virgin Islands for Asia-based parties

The BVI is an increasingly popular arbitral seat supported by a modern pro-arbitration legal framework, modern arbitration facilities, and a world-class arbitration institution of its own in the form of the BVI International Arbitration Centre ("**BVIAC**"). The ready availability of BVI legal expertise for any such arbitration under the supervision of the well-respected BVI Courts

provides added comfort for parties seeking a dispute resolution venue in a stable jurisdiction.

## Directors of BVI companies: to whom do you owe duties if your company is experiencing financial stress?

Notwithstanding the development and rollout of Covid-19 vaccines, the global pandemic and the associated economic crisis will continue to have a significant impact on businesses of all sizes in most sectors for the foreseeable future. It is clear that a number of companies' revenues will decline further. Not only will such companies be concerned about their ability to retain employees, there may be continued doubt in their ability to sustain their supply chains. Other companies will be forced to abandon, or at least delay, planned growth projects. Inevitably, a proportion of companies will be concerned as to their ability to continue to service existing loans.

## Using provisional liquidation offshore to preserve bondholder claims under keepwell deeds

Offshore companies are frequently used to facilitate debt finance transactions for large PRC based corporate groups. In the context of a bond issue, the corporate group will often incorporate an offshore subsidiary for the sole purpose of acting as the bond issuer.

## Avenues of redress for stakeholders in Cayman incorporated companies facing the excesses of majority shareholders and/or their appointed directors

Against the backdrop of differing economies, laws and regulations throughout Asia, choosing to incorporate Cayman entities into holding and investment structures allows international stakeholders to co-operate under the aegis of a stable and effective judicial system. Appeals from the Grand Court of the Cayman Islands lie with the Cayman Islands Court of Appeal, comprising judges who have held high judicial office in the Commonwealth. The Judicial Committee of the Privy Council is the final Appellate Court for the Cayman Islands. As such, through its Court system, Cayman is able to provide the investment community with impartial, established and highly regarded judicial resources dedicated to resolving complex commercial disputes.

## Cayman Court provides clarity on costs

In a costs ruling delivered on 12 March 2021, the Honourable Justice Ramsay-Hale provided welcome clarity on the circumstances in which the Grand Court of the Cayman Islands will make a costs award on the indemnity basis. A successful party can expect to recover a higher proportion of its costs when an award is made on the indemnity basis (rather than the standard basis) since only costs that are unreasonably incurred or are of an unreasonable amount will be disallowed on taxation, and any doubts as to reasonableness are resolved in favour of the

successful party.

## 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.

## Disclaimer

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