



## In Your Court: Offshore Dispute Resolution Review - October 2021

Newsletters - 19/10/2021

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As we move into Q4, 2021 continues to be one of our busiest years for our dispute resolution teams. They are involved in a broad range of large, high value and complex cases, involving numerous areas of work. These include contentious insolvency, commercial litigation, fraud and asset tracing, regulatory actions, professional negligence, and private client disputes or trust restructuring, amid other contentious matters.

We are also seeing the continuation and growth in the number of disputed valuation cases that involve the squeeze-out of minority shareholders – usually to facilitate a company's subsequent public offering in China.

Earlier this month, the Privy Council chose to uphold BVI freestanding freezing injunctions, otherwise known as Black Swan injunctions, in a highly anticipated judgement. You can read more on this decision in Brian Lacy's article below. We also cover some of the fundamentals of recent cases from an offshore perspective in our Snapshots series, and update you on some important developments in our jurisdictions.

Enjoy In Your Court – and if you would like to discuss any of these topics further, please get in touch.

Meet our global [Dispute Resolution team](#).

## Our latest Snapshots: to-the-point summaries of key areas of law

- [Bearer share companies in the BVI](#)
- [Implementing Cayman Islands Charging Orders in aid of enforcing foreign arbitral awards](#)
- [Enforcement of foreign arbitral awards in the Cayman Islands](#)
- [Management meetings confirmed as being integral in section 238 proceedings](#)
- [Fair rate of interest in section 238 proceedings to include a compounding element](#)
- [Investment losses in Guernsey](#)

### [BVI Commercial Court discharges injunction restraining privatisation of NASDAQ-listed BVI Company](#)

Nicholas Burkill, Justin Davis, Jean Lau, James McDermott

A recent judgment from the BVI Commercial Court is a further example of the court's swiftness to exercise its jurisdiction in respect of BVI companies listed on US exchanges. The decision also serves as a reminder of the importance of an applicant's duty of full and frank disclosure and fair presentation in an ex parte hearing and the dangers of breaching that duty.

### [Black Swan flies and The Siskina lists: Privy Council upholds BVI freestanding freezing injunctions](#)

Brian Lacy

The Privy Council has handed down its much anticipated judgement in *Broad Idea*. By a majority, the Board:

1. Upheld (albeit obiter) the Black Swan jurisdiction, which, since the original judgment by Bannister J in 2010, [2] had been a vital tool [3] in aid of judgment and award enforcement in the BVI, permitting freezing injunctions against BVI respondents to foreign proceedings in aid of potential future enforcement.
2. Agreed that, on the rules and law as it then was, the Court did not have jurisdiction to grant service out of a claim seeking only a freezing injunction.

### [Grand Court confirms test for liquidator independence](#)

Gemma Lardner and Aleisha Brown

The Grand Court has recently provided helpful clarification as to the appropriate test to be applied when a dispute arises over the identity of the insolvency practitioners proposed to be appointed by a creditor or the company. In *Global Fidelity Bank Ltd (in Voluntary Liquidation)* the Court confirmed the 3-stage test for determining independence and that in applying the test, significant weight should be afforded to the views of the creditors.

### Latest Cayman disputes from the Middle East

Jennifer Fox and Rebecca Findlay

There has been a marked increase in the volume of mandates for Ogier either originating from or involving structures with investment activities in the Middle East. Regional market drivers alongside a number of substantial fraud cases have propelled this growth. On the non-contentious side there is strong demand for Cayman investment funds and private wealth structures. This article explores recent Cayman litigation cases emanating from the Middle East.

### 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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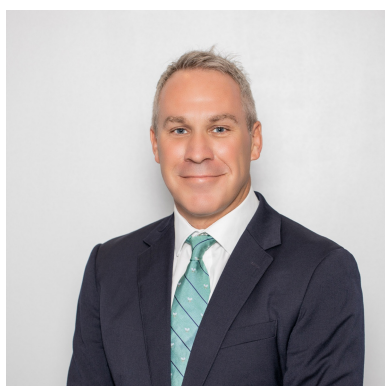
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