

## The latest in dispute resolution

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### **Are you witnessing an increasing trend towards any particular types of dispute?**

There has been a noticeable increase in contentious trusts matters, including matters where a trustee is seeking to have a momentous decision blessed by the Court, exercising its supervisory jurisdiction over Guernsey trusts. There have now been a number of matters where the Court's jurisdiction in relation to trusts has also engaged its jurisdiction in relation to structures that are or might become insolvent. There has also been a noticeable uptick in the number of regulatory issues that our licensee clients are involved in – that may in part be because of a MONEYVAL visit to Guernsey scheduled for 2024.

Ogier is experiencing an increase in the volume and size of instructions arising out of the current economic climate and we're assisting a range of institutions, companies, trustees, beneficiaries, protectors and directors across our regulatory, contentious trusts and restructuring and corporate recovery teams.

### **Digital change and implementation of new technology has been a constant over the past years. Has digital change had a concrete impact on how disputes are managed?**

We are constantly seeking out ways of working more effectively and better putting our people first (both the Ogier team and our clients). Cases can be managed much more effectively thanks to new digital tools – for example, at Ogier we make use of secure digital platforms to provide one central location for all documents and communications between us and our clients, which also greatly speeds up court bundles compilation by digitising the process.

Thanks to secure digital solutions and an international team across time zones, we are able to

work remotely everywhere all of the time, and matters can be picked up overnight in another jurisdiction and handed back when the other team is back online. We can provide clients with access to their key documents and materials electronically, collaboratively and securely.

## **What is the main piece of advice you usually give to your clients who have no option but to go to court?**

There is virtually always some alternative to going through the Court process. It may take some imagination and careful thought to identify alternative strategies and solutions but that is almost always a process that is worth going through to identify one best way to proceed.

## **Would you like to add anything?**

The rising tide of insolvencies anticipated as a result of the economic environment will impact the private wealth world, and dispute resolution practitioners are bracing themselves for increased restructuring and insolvency disputes, alongside satellite disputes in areas like directors' duties and fraud and asset tracing. While a trust technically can't go insolvent as it's not a separate legal entity, if the trustee is unable to meet its debts as trustee as they fall due out of the trust property, then this is similar to an insolvency situation. 'Insolvency' in a trust brings about a shift towards the interests of creditors (analogous to that seen in company law).

These issues have exercised the Privy Council which has recently held that various trustees fees incurred in relation to an insolvent trust are to be paid on an equal footing ("pari passu"), rather than on the basis that the fees incurred first in time are paid in preference to those incurred later. This is likely to give rise to a need to consider other issues in the future.

### **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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