

UK Offshore report: Keeping a weather eye

Firms in the UK Crown Dependencies have moved from staying afloat to bucking the trend amid Covid-related economic uncertainty. *LB* speaks to leading offshore players for the full picture

JEMIMA MARSHALL

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BUCKING THE TREND

In our 2021 offshore report, law firm pundits placed their bets on the market drivers they predicted would define the coming year. Notwithstanding some unsurprising volatility, the outlook has proved far brighter than many had dared to hope.

‘There was a sense that revenues were going to drop last year, the courts were going to close and strategic decisions would go on hold’, says Jason Romer, group managing partner of Collas Crill, ‘but that never happened. Revenues have continued to increase, the costs are down and we continue to get busier.’

In numerous discussions with partners across the self-governing islands of the British Crown – the Bailiwicks of Guernsey and Jersey, and the Isle of Man, also known as the Crown Dependencies – many echoed the sentiments of Romer. Musing on the Guernsey and Jersey market, he asserts: ‘The offshore legal sector has been fortunate to buck the overall economic trend and our islands have been incredibly resilient throughout Covid-19.’

Indeed, not all trends were unforeseen, with litigation accounting for a significant share of firms’ billable hours, as had been broadly predicted last year.

As Stephen Baker, senior partner of Baker & Partners, notes: ‘Commercial and trusts litigation continues to go from strength to strength in Jersey.’ Meanwhile, specialist litigation and dispute resolution firms are not the only ones who have been kept busy with contentious matters. Ogier’s global managing partner, Edward Mackereth, concurs: ‘In the Channel Islands, we have seen a range of disputes, a number of breaches of director duty claims and proceeds of crime work, which results in civil action against the bank, acting for both banks and customers.’

Elsewhere in the Guernsey and Jersey markets, Tim Pearce, global managing partner of Bedell Cristin, believes that people are generally more confident in the market returning to relative normality. This growing bullishness is reflected in the private equity sector, as the firm recently advised JT Group, the Jersey-based global telecommunications company, on an agreed sale of a majority stake in its Internet of Things (IoT) division to Perwyn, an international private and growth equity investor.

Special purpose acquisition company (SPAC) transactions are also on the rise, with Ogier’s Guernsey team advising Disruptive Capital Acquisition Company on its £125m listing, the first SPAC on Euronext Amsterdam to be listed and traded in pounds sterling. Mackereth is



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sanguine: ‘The US SPAC market is slowing but growing steadily in Europe, and we expect to see an increasing number of SPACs headed to Guernsey in the short term – the jurisdiction has the right flexible corporate and regulatory framework for SPAC launches. The only difficulty

we see is the market’s general ability to cope with the volume of new vehicles.’

NEW TRICKS

Elsewhere, Maples’ corporate, finance, and funds and investment management



▶ practices in Jersey acted on the migration of an investment fund structured as a foreign limited partnership into Jersey. ‘The transaction, being the first of its type following the introduction of a statutory regime to permit such migrations in mid-2020, also involved the migration of the fund’s general partner, as well as the, registration of the fund as a Jersey private fund,’ says Nick Evans, head of office at Maples in Jersey.

Meanwhile, of the private wealth sector, Romer observes: ‘many have stopped, reflected, and assessed their personal affairs. There has been a spike in instructions relating to wills, lasting powers of attorney, post-nuptial agreements, reassessing and consolidating trust and company structures and advising on new private trust companies.’ To keep up with the increasing demand in this area, Bedell Cristin recently strengthened its Guernsey international private client team with the recruitment of Elena Gogh as a partner.

While Collas Crill and Bedell Cristin have experienced an increasing workflow in the private wealth sector, John Rimmer, sole practitioner of private client boutique Advocate

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Tim Pearce, Bedell Cristin

John Rimmer, has seen a continued decline in outsourcing legal work to law firms in this area, with trust companies, ever-expanding with private equity ownership, tending to use in-house lawyers. Rimmer asserts: ‘Larger firms are probably thriving more strongly. I suspect that this is because they are able to spread the basic costs of doing business more widely.’

Rimmer’s observations resonate with many: ‘It is likely all major offshore firms will survive. They have broad practices and either

own their own financial services businesses such as trust and corporate service providers or fund administrators or have the closest of connections to such businesses. They are part and parcel of the offshore financial services industry which thrives.’

Elsewhere, the Channel Islands property market continues to boom, as evidenced by Jason Morgan, head of Carey Olsen’s property group in Guernsey, in the firm’s recent article on the surge in activity and

► increase in the number of sales across the local and open markets.

Romer similarly notes: 'In Guernsey, nearly £1bn worth of property changed hands in 2021, the highest value conveyed since statistics were recorded. I'd estimate it to be over a third more for freehold transactions alone in Jersey.'

Bedell Cristin's Pearce observes that there has been an increased trend towards relocation, specifically to Guernsey and Jersey. 'People are thinking long-term. They do not need to be at their desk in London. With the world being more flexible, many are taking the opportunity to live elsewhere. This has resulted in more homes being built, an increased demand for commercial property and for local business services. The focus has therefore been to make the jurisdictions more suitable for people to live and work.'

This development will ignite further interest in other areas. An extension of Guernsey's discrimination law is set to take place this year. The first tranche will provide protection against discrimination on the grounds of race, disability, carer status, sexual orientation, and religious belief.

Elsewhere, many bemoan an absence of restructurings and insolvencies. 'In terms of what's quieter, it's fair to say that everyone expected a wave of insolvencies, but this hasn't happened yet. We're anticipating it in the year ahead and are starting to see Asian insolvencies coming out of China due to the debt crisis there,' Collas Crill's Romer asserts, adding that the cessation of government-backed financial support in different parts of the world will further increase the number of such mandates, not just for offshore firms, but globally.

WEATHERING THE STORM

Many are alive to the threat of global economic hardship and the collapse of certain industries, with offshore firms expecting further trials and tribulations along the way. 'This is inevitable and part and parcel of practice offshore. It is always easy to blame a neighbour or someone outside your own jurisdiction for economic hardship or other woes. A challenge for offshore firms is to keep the debate properly informed,' says Baker.

Pearce adds: 'If you have multiple jurisdictions and multiple business lines, you will do well and you can weather the storm. If litigation is down, corporate will be up and vice versa. It is rare that they will be performing at the same level at the same time, and that is the beauty of having a full-service law firm. You also need an appetite for change and willingness to embrace the changes we have been forced to implement.'



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Edward Mackereth, Ogier

Initially of course, there was no option but to work remotely and spend more time at our computer screens, inevitably changing our traditional method of interaction. This has had its advantages, from eliminating travel times and costs to an improved work-life balance. While many firms continue to embrace these changes there will inevitably be a need to reintroduce more traditional modes of operating.

Says Mackereth: 'One of the main challenges of this period is the fact that we've been busier than ever from a workflow perspective, while continuing to deal with dislocation of people during the pandemic, so looking after the wellbeing of our existing employee base and integrating new joiners who may have been working almost entirely remotely has been a big focus.'

Romer identifies a drawback in the dislocation of potential new joiners: 'There's a squeeze

globally on professionals and real competition to attract top talent, with onshore firms having a similar challenge, and restrictions on travel have hampered progress for lawyers considering relocation to an offshore jurisdiction.'

Rimmer notes another downside: 'The greatest problems arising from the pandemic have been the difficulty in holding personal, face-to-face, meetings with clients. These are most important when dealing with private clients.'

Romer raises the age-old issue: 'Technology is also key to the client experience – firms need to be investing in their systems and processes, this isn't something that can be kicked down the road. Clients expect a slick service, automated processes and protection in terms of cyber security. But it's not just about meeting growing client demands and expectations – it's also about helping the whole firm work more effectively and, through automation and

smoother processes, freeing people up to focus on more rewarding, value-add work.'

Mackereth says things could be worse: 'Both local economies are recovering, with Guernsey quicker to bounce back to 2019 levels of growth. Given the continued strength and resilience of the finance sector (the central pillar of both jurisdictions' economies) both Guernsey and Jersey are in much stronger positions than we're seeing in other jurisdictions across the globe.'

However, Guernsey's hospitality and transport industries witnessed the biggest financial impact, as well as retail, and firms are starting to see restructurings in these sectors. The financial services sector only shrank by 2%, while neighbour Jersey contracted by 9% in the same period. Furthermore, 'there is a thriving jobs market in both Guernsey and Jersey at the moment which should hopefully draw more talent to the islands as we emerge into this

phase of de-escalation of lockdown restrictions', notes Mackereth.

Rimmer also provides an upbeat view on the Manx economy. 'Most of the population of the Isle of Man remains comfortable and young people are thriving compared with their peers in other places. The businesses driving this success have changed, moving away from the financial sector, and into tech, biomedical and online trading businesses.' Following two years of struggle, the tourism and hospitality sectors will deservedly benefit from The Isle of Man TT event, the island's annual motorcycle racing event, set to take place in May and June this year.

HORIZON SCANNING

There is little doubt that the last two years have been turbulent. It does, however, feel that many are beginning to see the light at the end of the tunnel. 'Firms with the ability and

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► vision to evolve their business strategy will thrive. Business planning cannot remain static, particularly in turbulent times. Thriving firms will have strong leadership and focus,' asserts Baker.

Some challenges are more localised. Says Pearce: 'The main challenge, which has been accentuated by the pandemic, is keeping the business afloat. Every business needs to plan for the worst. One area of difficulty continues to be people paying their bills late, meaning you must have a keen eye on prudent cash management in the business. As we return to normal, people will start paying their debts quicker and we will return to a more normalised cycle.'

Nevertheless, it is fair to say that fresh, business-critical challenges are never too far away.

Pearce speaks to the now ubiquitous theme of environmental, social and governance: 'ESG has never been off the agenda. People think it is a new phenomenon, however, it is simply an extension of what firms have been doing for some time. It embraces the corporate and social responsibilities we have been taking and making sure whatever we do is good for the environment and society. It has become mainstream, and people are starting to understand it more.'

ESG is increasingly becoming part of the narrative and offshore firms have been active in relaying this message to their clients. According to Evans, Maples has been 'working with investment managers and institutional investors in Europe, America and Asia to help implement ESG policies and frameworks into their various fund and other operational infrastructures.'

Mackereth agrees: 'One of the challenges for law firms is the knowledge gap on sustainability advising – lawyers now need to be in a position to spot and advise on issues relating to climate change and ESG. Therefore, we have also focused heavily on delivering ESG training and knowhow to lawyers. This doesn't make them ESG experts overnight, but it does help build expertise over time, and we've seen how beneficial it is to clients when our lawyers are not just technical specialists but also knowledgeable in sustainable investing and finance.'

It feels inevitable that changes relating to Brexit and its impact on the offshore legal community will continue to make the worry-lists of law firm decision-makers.

'The UK is already launching consultations to reform areas of UK regulation, in respect of asset-holding structures and funds where typically an offshore structure would have been used,' notes Romer. He also speaks to more universal challenges: 'Leaders and management teams will also have a keen eye on the rising cost of doing



'Jersey has been widely promoted as an alternative jurisdiction solution for US CLO issuers that are looking to market new deals to Europe.' Nick Evans, Maples

business at the moment, irrespective of their sector – inflationary pressures, cost of living, supply chain disruption brought on by Covid and Brexit, record-high energy prices and so on. All firms should be factoring these into their budgets and forecasts right now, and we're no exception.'

In Jersey, Evans acknowledges the increased interest in the jurisdiction from arrangers and managers of structured finance products and expects the Jersey securitisation market to continue to thrive throughout 2022. 'In particular, Jersey has been widely promoted as an alternative jurisdiction solution for US CLO issuers that are looking to market new deals to Europe,' he says.

Mackereth looks to the bigger picture. 'The year 2022 could well be an inflexion year for geopolitics. With questions waiting to be answered in relation to relationships between the west and both Russia and China, to the shape of US policy abroad, to what Britain's longer-term relationship with Europe might look like, as well as whether the global economy has

entered a new sustained inflationary phase and, if so, how that impacts political activity.'

Whatever the concerns since Covid struck, most are in agreement that firms in the Crown Dependencies have rebounded admirably and are preparing themselves for what they hope will be a vibrant year.

Notes Romer: 'I'm convinced that law firm partners will emerge from the pandemic as more empathetic leaders which will be a good thing for the profession as a whole. Great leadership isn't just about providing excellent client service and managing operations, it's about helping, guiding, and inspiring people, being mentors, coaches and confidantes. Covid has reinforced that we don't lead for ourselves, but for each and every individual who wants to follow – every partner and leader must strive to live by this, and the pandemic has given us all plenty of opportunity to practice.'

Mackereth concludes: 'change is afoot. It will come with both opportunity and risk, and we need to be ready for both.' **LB**

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