

Offshore firms are still fighting to defend their jurisdictions as the financial crisis reignites debate over tax evasion and tax avoidance. **Dominic Carman** reports

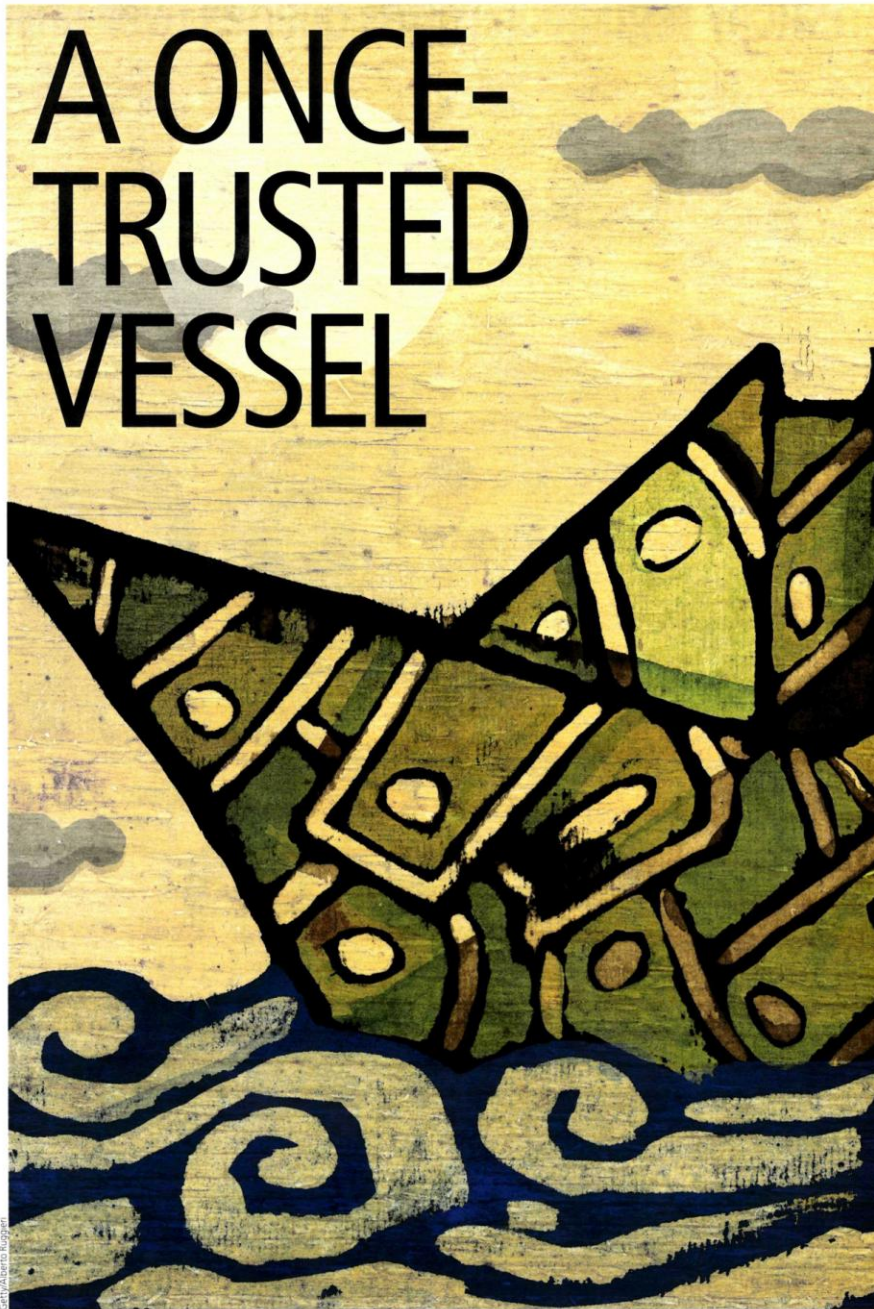
The recent US Department of Justice decision to dismiss a criminal prosecution for fostering tax evasion against UBS highlights two perennial themes affecting offshore law firms: transparency and disclosure.

UBS, Switzerland's largest bank, was accused of helping thousands of wealthy clients set up sham offshore companies – hiding \$20bn (\$12.7bn) in Panama, Hong Kong and the British Virgin Islands (BVI) – and has paid a \$780m (\$494m) penalty. "This is the end of bank secrecy in Switzerland," says Robert Fink, of New York tax specialist Kostelanetz & Fink. "It is the most significant tax case, as far as revenues are concerned, in US history."

According to Appleby managing partner Shaun Morris, it's an isolated example: "Disclosure has changed irrevocably. Any country still behind in terms of their regulatory regime will be forced to change, or they will be forced out of business. During the crisis, offshore financial centres (OFCs) were seen as causing the problem. Everybody who understands economics and the financial markets knows that's untrue."

Carey Olsen managing partner Alex Ohlsson believes the issue is "specific to Switzerland, plus jurisdictions like Liechtenstein, which have been very focused on secrecy and non-disclosure". Conyers Dill & Pearman managing partner John Collis adds: "Transparency does not affect our clients, many of which are Fortune 500 companies. They've never used OFCs for secrecy."

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the Organisation for Economic Co-operation and Development (OECD). This has been further enhanced by the favourable Foot Report on the UK's offshore dependencies and crown territories.

"The landscape has changed," says Morris. "Bermuda, for example, has been appointed vice chair of the new global forum of the OECD." Bermuda was the first country to make the OECD's white list when it signed its 12th tax information exchange agreement with the Netherlands in June 2009.

But as 2010 saw the offshore legal elite develop their business on an upward trajectory – aided by insolvency, restructuring and litigation in many jurisdictions – the UBS case serves as an unwelcome reminder of the adverse publicity still facing OFCs from the three Ps: politicians, press and prosecutors. "I try and ban the use of the word offshore – it doesn't do us any good," says Richard Peters, managing partner at Harney Westwood & Riegels.

Other offshore lawyers mount a more robust defence, their arguments predicated on widespread independent analysis that their firms operate in jurisdictions which are reputable, recognised and meet international standards.

Mourant Ozannes managing partner Jonathan Rigby says: "Anyone practising offshore in recent years knows that all of the OFCs have seen greater scrutiny from onshore governments and supra-national bodies. We now have the opportunity to demonstrate that the premier OFCs are just as well regulated as major onshore centres. We comply with international standards on transparency and on

Continued on page 24

Continued from page 23
information exchange.”

Ogier chief executive Nick Kershaw goes further: “Offshore centres make a positive contribution as a conduit for investment from one market to another: 8% of global investment now goes through an OFC. It is efficient and prevents double taxation. It’s not tax avoidance, it’s double tax avoidance – tax is a drag on return on investment. OFCs facilitate investment; without them, investment will be materially damaged.”

Educating the masses

Part of the offshore narrative is continuing education. At the end of 2009, 19 offshore jurisdictions formed the International Financial Centres Forum, created to provide a co-ordinated response to political criticism directed towards the offshore community. At Maples & Calder, managing partner Henry Smith recently visited Strasbourg and Brussels to brief members of European Parliament: “I talked about the Cayman fund industry, our attitude to compliance, anti-money laundering and tax information exchange. They see that we’re part of the global picture.” Proactively addressing the media, Smith believes the positive offshore message was “often lost in

historical stereotypes”.

Cayman, he argues, is the leading domicile for investment funds and hedge funds (70% of all funds are Cayman-registered), which “help create good returns for pensioners”. He highlights the improved rate of new fund formation in Cayman, up 5% since last year.

In September, Wolseley, the world’s largest building materials supplier, relocated to Switzerland to cut its tax bill. The FTSE 100 company will be incorporated in Jersey, with its tax residence in Switzerland.

Will more companies move offshore for tax purposes? “It’s possible,” says Carey Olsen’s Ohlsson, whose firm advised Wolseley on its move. “But the UK is beginning to introduce provisions to make it more attractive for businesses to remain headquartered in the UK.”

Rigby argues that “there are likely to be further opportunities as we see an increase in corporate tax rates and regulation onshore.” But Collis has doubts: “I’m not sure that higher rates in the UK, or elsewhere, are going to drive a second stream of offshore transactions because in large measure, despite the rhetoric, transactions are not normally determined by reducing the home company’s domestic tax.”



Jonathan Rigby, Mourant Ozannes

Morris points to wealth management as a reason some businesses might move offshore: “Yes, no question in terms of funds, because of the penal tax environment in the UK.” Ogier’s Kershaw agrees that the movement may come with fund management companies: “As small, mobile operations, high profit and low footprint, they may move more of their operations offshore driven by higher rates of capital gains tax.” As examples, he highlights private equity boss Guy Hands moving his operation to Guernsey this year and the Altis hedge fund, which moved to Jersey in 2005.

The urge to merge

Wolseley apart, the landmark move of the offshore legal year was a merger – between Mourant du Feu & Jeune and Ozannes. Structured constitutionally as one firm, “the merger gives us more strength in depth across the Channel Islands,” says Rigby. The merged entity, finalised in June, has nearly 250 lawyers, with 15 partners in Guernsey and 25 in Jersey.

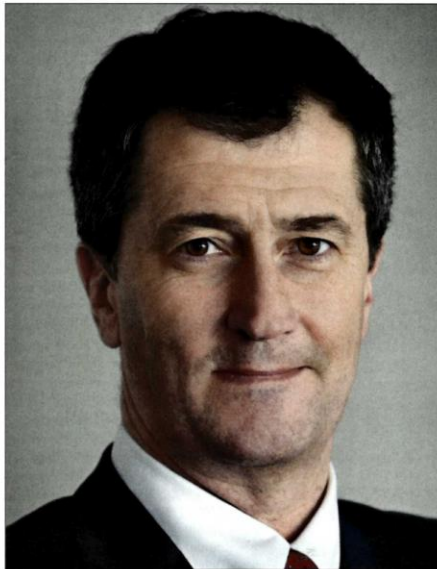
Do other firms feel the urge to merge? “A Channel Islands merger is part of our strategy,” says Conyers’ Collis, “but it’s taking longer than

we anticipated. While we continue discussions, we are going to get Jersey and Guernsey licences in our own name.” The firm made up seven new partners in April – “a clear indicator we have confidence going forward,” says Collis.

“Best friend” firms Carey Olsen and Maples would seem a near perfect fit, but neither firm expresses any appetite: “Cayman and BVI are very different jurisdictions to the Channel Islands. A transatlantic merger would be very difficult to achieve,” says Ohlsson. Smith dismisses it as an option: “We have a good story to tell and we’re sticking to it.” Ogier, which merged with Boxalls in 2003 and WSsmiths in 2007, is contemplating further mergers, potentially with another major offshore firm. And Harneys “would consider merging with the right candidate,” says Peters.

Appleby has planted its flag through a series of mergers, creating one of the biggest offshore footprints of any firm. It says further mergers are a definite option. The firm’s key developments in 2010 were a new Guernsey office, taking their total to 12, and several strategic

Continued to page 26



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Continued from page 24

lateral hires: funds partner Richard Adlestone and banking partner Julian Black joined the Cayman office from Walkers; banking partner Matthew Stocker joined the Hong Kong office from Maples, funds partner Matthew Feargrieve joined the Zurich office from Mourant and James Gaudin joined the Jersey office, also from Walkers.

Off the island, into the city

So, where is the work coming from, and where is it going? "Asia has really come back, almost to pre-recession levels," says Collis. "Bermuda is our largest office, but the strategy is to establish offices in financial centres where the work is. It won't be on the islands anymore, it will be in the cities. In that context, we're taking the fight for Bermuda work to Moscow, to Sao Paulo." Conyers' Russia and Brazil offices are thriving.

Morris adds: "We've seen significant growth in Asian markets. The US is still struggling, the economic situation has had a negative effect on our Caribbean offices, but we are well positioned

in Asia and Latin America, Brazil in particular."

Rigby believes that "you have to be in a number of the premier offshore jurisdictions to attract the work". Mourant's biggest growth is likely to come from Cayman – driven by work from Brazil, Russia, India and China (BRIC). Building the Cayman office up to the levels of Jersey and Guernsey will be facilitated by the imminent announcement of a significant number of strategic lateral hires.

Offshore firms everywhere continue to extend their reach to access BRIC investment, especially in Asia. In distinguishing between the offshore jurisdictions and cities where firms provide those services, Kershaw suggests that four principal jurisdictions – Jersey, Guernsey, Cayman and BVI – will potentially put more blue water between his firm and the rest. "Barriers to entry are high," says Smith.

While the UK and US serve as primary engines to the big four, albeit in low gear, the pivotal location for burgeoning work remains Hong Kong: Appleby,

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Conyers, Harneys, Maples, Ogier and Walkers all report thriving local offices. "The hot economy, in terms of deal flows and capital flows is China," says Morris. "That is where the axis of the economy has shifted."

Kershaw is bullish: "Ogier's big focus has been Asia. Building our Channel Islands business out of Hong Kong complements our established BVI and Cayman offering." The firm is moving several partners there: Marcus Lease from Guernsey, Nathan Powell from Jersey and James Bergstrom, managing partner in Cayman, who will become managing partner in Hong Kong.

"We are growing aggressively," says Kershaw. "It's more than a proportional shift, it's a major strategic focus." This year, Ogier advised Rusal on the first Russian listing – and first Jersey-based company listing – on the Hong Kong Stock Exchange. Meanwhile, BVI specialist and former head of Harneys in Hong Kong, Michael Gagie, recently left to join Maples' local office.

And soon joining the offshore Hong Kong club will be Carey Olsen. "We need an office there within 12 months," says Ohlsson. "It's an opportunity, given the widespread use of Jersey and Guernsey structures in Asia."

Mourant Ozannes will also be opening: "We have to be in Hong Kong – we are at a disadvantage not being there," says Rigby. At Harneys, Peters is aiming straight for the mainland: "I can see us opening in Beijing – it's more compelling than Shanghai because of the government offices."

Other offshore economies

Maples funds work has been prospering in Ireland, where the firm now has 50 lawyers, recently boosted by a series of partner hires: Peter Stapleton from Dillon Eustace and Paul Dobbyn, former

senior partner at A&L Goodbody.

"The real threat to the Channel Islands, Cayman and BVI comes from Switzerland, Singapore, and possibly New Zealand. But increased competition will be matched by increased demand, it's not migrating away," suggests Collis. Singapore, argues Morris, is becoming a jurisdiction of choice for Chinese and Indian companies. Rigby also anticipates "tremendous growth" in Singapore. Conyers already has an office there.

When it comes to Malta, Cyprus and Mauritius – smaller offshore centres on the fast track – the picture is more narrowly focused: Mauritius is seen as the gateway to India, Cyprus a gateway to and from Russia and Malta a gateway more generally from Eastern Europe.

"They have a different story to tell," says Smith. "Their success is dependent upon how those markets develop." Conyers' Mauritius office has been "very successful," says Collis. The office has grown to four lawyers. The firm plans to add bodies to their Sao Paulo office, which, like the Mauritius arm, opened last year.

Morris is looking at possible offices in Malta, Cyprus and Singapore as Appleby continues its ambitious expansion. In April, Harneys merged with Cypriot law firm Aristodemou Loizides Yiolitis, with which it had enjoyed a 'best friend' arrangement since 2008. Malta has the advantage of European Union membership and an attractive corporate tax regime, suggests Ohlsson. But the country has a long way to go, argues Rigby. Success and confidence in OFCs, he adds, depend upon "infrastructure, expertise, case law and regulators with an established track record".

The message is clear: aspirant players need to aim very high to reach the standards being set by the offshore premier league.



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