

Shifting Sands

Navigating a changing cross-border insolvency landscape

Grant Thornton and South Square's
cross-border insolvency survey 2021

2021





Welcome to *Shifting sands*, a report in which we explore the changing dynamics of multijurisdictional insolvencies.

Just over five years ago Grant Thornton and South Square jointly published our previous report from *Discord to Harmony*. In 2015 we highlighted the growing prominence of offshore jurisdictions in cross-border insolvencies and the move towards greater harmonisation.

Much has changed since then. The adoption of UNCITRAL model law has fostered greater mutual recognition, and the maturation of insolvency legislation and judicial infrastructure within offshore jurisdictions has contributed to a more seamless experience across borders.

On a bigger scale, the past five years has witnessed a series of unprecedented shocks: the Brexit vote, the election of the Trump administration, dramatic events surrounding its removal and, the enduring COVID-19 global pandemic. COVID-19 has fundamentally disrupted many industries, from manufacturing to tourism, retail to construction. While a new global economic downturn may signal an increased workload for restructuring and insolvency professionals, it also requires us to embrace new ways of working to assist in getting economies back on their feet.

Shifting sands charts the likely impact of these trends. It provides some answers to questions such as:

- What makes a jurisdiction attractive for commencing insolvency proceedings?
- How is the global balance between offshore and onshore jurisdictions changing?
- What challenges remain in pursuing cross-border insolvencies and how can these be overcome?

We are grateful to the 150 leading industry practitioners who took part in our online survey about cross-border insolvencies. This was followed by a series of 12 in-depth interviews to explore viewpoints further, and we would like to thank those individuals for setting aside extra time to participate in our research.

We would also like to thank members of the Grant Thornton and South Square working group who helped to shape the direction of this research as well as Meridian West, the consultancy who carried out independent research and analysis on our behalf.

At a time when uncertainty continues to dominate the agenda, we hope this report and its findings will help you navigate the shifting insolvency landscape.

Kevin Hellard
Grant Thornton

Richard Fisher QC
South Square

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Executive summary

An evolving global insolvency landscape

47%

anticipate an increase in insolvency activity over the next three years

82%

say increased availability of litigation funding will drive an increase in insolvencies

41%

believe the UK has the most effective insolvency regime, followed by the US at 33%

150 lawyers and other market participants representing more than 25 onshore and offshore jurisdictions participated in our research. Their views paint a picture of a changing cross-border insolvency landscape. In summary, our research finds that:

Offshore insolvency activity is anticipated to increase over the next three years.

47% of those surveyed believe the number of offshore insolvencies will increase. Given our research was conducted prior to the most severe economic impacts of COVID-19, we anticipate this will lead to a significant increase in activity over the medium-term.

The availability of litigation funding and Brexit will drive an increase in insolvency activity.

82% and 74% respectively believe these factors will increase activity. Again, a global economic downturn caused by the COVID-19 pandemic is expected to accelerate this at an even faster rate.

Insolvency activity will continue to globalise.

On average 38% of the insolvencies undertaken by the practitioners we surveyed originate from Europe. However, the biggest future increase is expected for work originating in Asia-Pacific, and the biggest decrease for those originating in Europe.

The most attractive jurisdictions for initiating insolvency proceedings have an independent judiciary and a robust legal framework.

95% say the independence of local judiciary and quality of legal framework are 'very important' when comparing the merits of different jurisdictions. This is closely followed by enforceability of judgments and having decisions recognised by other jurisdictions (both cited by 88%). These factors also topped the list in our 2015 research.

The UK and USA are considered to have the most effective insolvency regime.

41% of survey participants say the UK has the most effective corporate and insolvency laws, closely followed by the USA at 33%. Our research was conducted prior to the introduction of the new Corporate Insolvency and Governance Act 2020, which is intended to further strengthen the UK system.

Perceptions of offshore jurisdictions have improved since 2015.

Scores on our Attractiveness Index for offshore jurisdictions such as Bermuda, BVI, the Cayman Islands and Hong Kong have improved since 2015. We note that both BVI and Singapore join the Cayman Islands, the UK and the US within the top 5 jurisdictions for effective insolvency laws. Singapore now seems to be achieving the recognition anticipated in our 2015 report.

Access to funding, and the cost and speed of hearings remain challenging.

These issues were cited as challenges back in 2015 and remain the areas where offshore jurisdictions are rated less strongly in our Attractiveness Index this year.

Onshore-based advisors are preferred for complex, cross-border insolvencies.

Although our research reveals a general preference to instruct local advisors, 60% of those surveyed say the presence of cross-border aspects would have a significant influence on their decision to instruct Counsel or insolvency practitioners based onshore.

Globalisation and harmonisation

Cross-border insolvency in a connected world



The market practitioners we interviewed reported that the first quarter of 2020 was their busiest since Grant Thornton and South Square last undertook cross-border insolvency research in 2015. A steady increase in workload was noted even before the most severe impacts of the COVID-19 pandemic were felt.

But it is not just the volume of work that has changed in recent years. The nature of work undertaken appears to have evolved too.

Two important trends are identified in our research. First, the origination of insolvencies has become more globally diverse, with cross-border elements more prevalent. Second, higher levels of harmonisation between jurisdictions are facilitating cross-border solutions, and therefore levelling the playing field between jurisdictions.

Insolvency activity becomes more globally diverse

The participants in our research are drawn from more than 25 jurisdictions, 31% based in onshore centres and 69% based offshore. Regardless of their home jurisdiction, market practitioners tell us that their insolvency work has become more globally diverse within the last three years.

Greg Grossman, an insolvency lawyer at Sequor Law based in the United States, highlights this change:

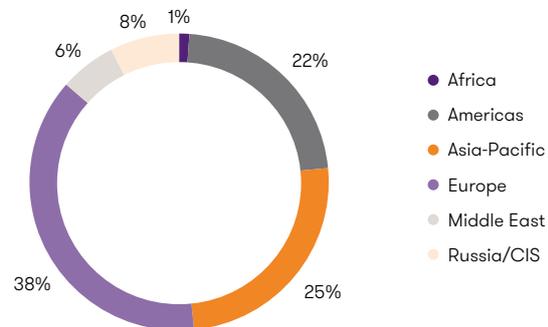
“In our international insolvency practice, well over seventy percent of the cases I am involved with involve Brazil. The next biggest jurisdictions after that would be the Cayman Islands, BVI, and the UK, plus a smattering of other places such as Romania, Chile and Mexico.”

Practitioners in offshore jurisdictions also tell us their work has developed more of a cross-border flavour. Danny Ong of Rajah & Tann notes that insolvency work in Singapore is becoming less domestically focussed:

“Whereas big-ticket restructurings in Singapore have traditionally been driven by Singapore and other Asian distressed companies, the last decade has certainly seen work originating from much further afield, often as a result of Singapore structure and parties being significantly involved.”

This anecdotal experience is reflected in our online survey. While an average of 38% of the insolvency work undertaken by our survey participants originates in Europe, significant volumes of work originate in the Asia-Pacific and the Americas regions.

Figure 1: Think about the insolvencies you have undertaken over the last three years. What proportion originated from the following regions?



Our research shows that the balance of work undertaken within offshore jurisdictions is even more diverse than within onshore centres. Within offshore jurisdictions, the largest proportion of work originates from Asia-Pacific (30%) followed by Europe (27%) and the Americas (24%).

There is also a greater volume of workflow from Russia (10%) and Middle East (8%) into offshore centre than onshore centres, where these regions comprise 5% and 4% of the total volumes respectively.

This global rebalancing of workflows is set to continue. Nearly two-thirds (64%) of those who undertake work in the Asia-Pacific region anticipate work originating from the region will increase. This compares with just 44% who believe work originating from Europe is likely to increase. Again, those based offshore are more bullish about the future insolvency pipeline.

64%

of respondents based in Asia-Pacific believe insolvencies in the region will increase

Mutual recognition and harmonisation drive greater jurisdiction choice

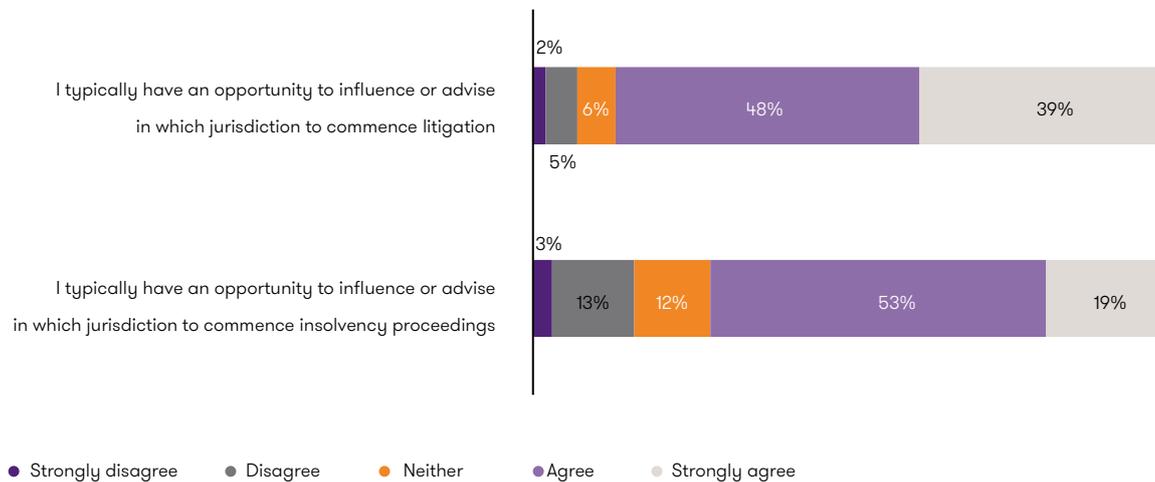
Another significant driver of change highlighted by our research is increased mutual recognition between jurisdictions and the harmonisation of legal frameworks, such as the adoption of UNCITRAL model law.

One consequence of increased recognition between jurisdictions is that processes in offshore jurisdictions have become more streamlined. Peter Hayden, a litigation partner in the Cayman Islands office of law firm Mourant, notes that:

“The position on getting foreign recognition for liquidators – both in England under Section 426 of the Insolvency Act but also in the US under Chapter 15 of the Bankruptcy Code – has definitely improved in recent years. Previously the US courts were very reluctant to recognise Cayman Islands liquidators, and so you would not have a lot of confidence that you would get recognition. However, these applications have now become commonplace. They are quick, easy and relatively inexpensive for liquidators to pursue.”

With more jurisdictions considered viable locations to pursue insolvency or restructuring activity, professionals now have much greater choice and influence over where to commence proceedings. Figure 2 shows that 87% of market practitioners now have an opportunity to influence where to commence litigation, and 72% say they can influence the choice of jurisdiction to commence insolvency proceedings.

Figure 2: To what extent do you agree with the following statements?



Maturing markets

The journey of offshore jurisdictions

Participants in our research point to significant improvements in the regulatory framework, local expertise and legal process infrastructure within offshore jurisdictions over the previous five years.

For example, Alex Henderson of global law firm Dentons highlights the change in perception of the Cayman Islands as a location for insolvency and restructuring activity:

“I think people are seeing our jurisdiction as maturing and developing a fairly sophisticated infrastructure. It is no longer just secrecy and tax avoidance that is driving the interest in Cayman Islands – they see other reasons to do business here and that includes insolvency and restructuring activity.”

Similarly, Ruairi Rynn, a restructuring and insolvency partner at Irish law firm William Fry, believes that an increase in local expertise has contributed to more people considering Ireland as a jurisdiction of choice:

“Within the Irish market, we have got a large number of specialists – solicitors, counsel, insolvency practitioners and even judges – who have cut their teeth on a huge volume of domestic restructuring and insolvency work who are well-positioned to turn their hand to cross-border work as evidenced by some of the large scale cross-border restructurings completed in Ireland in the last couple of years including Ballantyne Re plc, Indah Kiat, Weatherford plc and Nordic Aviation Capital.”

Challenging perceived wisdom: five reasons why offshore jurisdictions are becoming more attractive

Our research participants are keen to challenge legacy views of offshore jurisdictions and advocate for greater awareness of the developments that offshore jurisdictions have made over the last five years:

“There is often a lack of understanding among professionals based onshore of how robust, transparent and independent offshore insolvency regimes now are. Among the more sophisticated onshore consumers, and courts, there is a recognition that offshore insolvency has a key role to play in the cross-border toolkit.”

BVI-based lawyer

Throughout our research, five main reasons emerge as to why offshore jurisdictions have become an even more important part of the cross-border toolkit over the last five years:

1 Specialist judges



Enhanced local expertise through the appointment of experienced, specialist judges to sit in specialist insolvency or restructuring courts in offshore jurisdictions.

2 Process simplification



Simpler, faster and cheaper processes for achieving mutual recognition within a growing number of offshore jurisdictions.

3 Global networks



The established presence of global networks of advisors operating on the ground within offshore locations able to draw on an international network and global best practices.

4 Supranational frameworks



A growing interest in supranational frameworks such as UNCITRAL model law among judiciary in offshore locations and a willingness among lawmakers to adopt relevant legislation.

5 Familiarity of advisors



The increased frequency of, and familiarity with, insolvency and restructuring cases being heard in offshore centres has given market participants greater confidence that legal process and court infrastructure are fit-for-purpose.

Policymakers are driving change

In some jurisdictions change has been realised at the policy level with significant degrees of success. For example, in 2008 Guernsey enacted a new administration regime modelled on the liquidation and administration process available through the English courts but adapted to local requirements.

David Jones, a restructuring and insolvency lawyer with Carey Olsen based in Guernsey, believes that a proactive, local legislative agenda coupled with investment in legal infrastructure has enhanced the global standing of Guernsey for insolvency matters:

“We have had a series of large, high-profile insolvencies on our island over the last couple of years as people have become much more familiar with the process here. The Court here is flexible and has found a way to make every situation work even if it’s quite complicated. Guernsey is now viewed as a credible jurisdiction for insolvency, which was not always the case. Recognition between Guernsey and the UK is easy and that makes us particularly attractive for insolvencies that involve UK-based assets.”

A threat to onshore centres?

Will onshore centres lose out as offshore jurisdictions mature? The familiarity and longevity of onshore centres such as London and New York as global leaders for insolvency and restructuring work means that their dominance is likely to continue for some time.

However, as the quality of offshore jurisdictions continues to grow and the links between onshore and offshore strengthen, the gap between the two will likely diminish. As one insolvency lawyer suggests, these changes have begun to shift perceptions about the strength of offshore jurisdictions:

“We know that there are plans in some jurisdictions to set up dedicated insolvency courts or appoint more judges specialising in insolvency and restructuring. I don’t think anyone is under the illusion that these changes will take work away from London or New York. However, offshore jurisdictions are definitely gaining traction as credible alternatives.”

Singapore based insolvency lawyer

Greater choice brings greater scrutiny

The jurisdiction Attractiveness Index



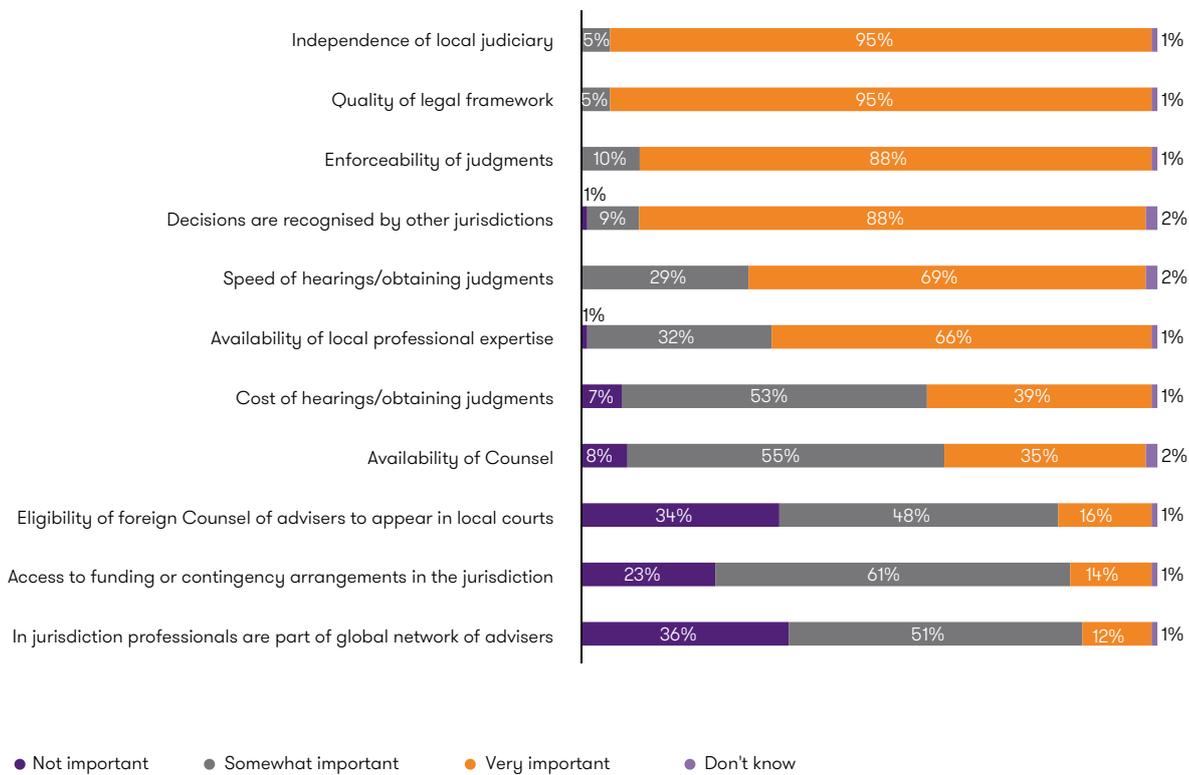
With more global jurisdictions viewed as credible, market participants face an increasing number of options - subject always to the case specifics - about where to commence insolvency or restructuring proceedings.

As in 2015, a robust legal framework and experienced judiciary producing judgments that are capable of being recognised and enforced around the world remains top of the list of factors that inform jurisdiction choice.

Certainty, clarity and quality lead the Attractiveness Index

When asked what they consider important in assessing jurisdiction suitability, 95% of our survey participants rate the independence of the local judiciary as ‘very important’. This is tied as the leading factor on our jurisdiction Attractiveness Index alongside the quality of the jurisdiction’s legal framework.

Figure 3: How important do you consider the following factors to be in assessing the effectiveness of an offshore jurisdiction for insolvency proceedings?



Other factors that rate highly in our Attractiveness Index are the enforceability of judgments and a requirement that decisions can be recognised by other jurisdictions – both cited by 88% as ‘very important’.

Speed, availability, and cost of hearings emerge as secondary priorities, not top of mind, but important nonetheless when assessing a jurisdiction’s attractiveness.

How do jurisdictions measure up to these criteria?

Research participants were asked to rate the jurisdictions where they had experience of insolvency proceedings against these same criteria. Overall, the independence of local judiciary tied as most important on our Attractiveness Index with quality of legal framework.

Speed and cost of hearing and obtaining judgments, were identified as secondary priorities, scoring generally less well. Both factors achieve an average score of only 3.5 out of 5. This suggests that jurisdictions that have made improvements to the speed and cost of their hearings are most likely to achieve an edge over jurisdictions where these factors remain problematic.

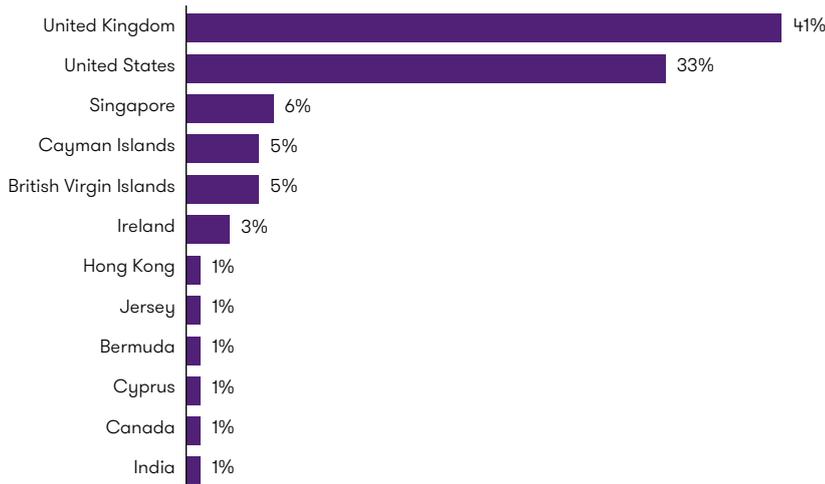
Onshore centres still lead for consistency and certainty



When asked to select which jurisdictions have the most effective corporate and insolvency laws, the United Kingdom and the United States are singled out by our research participants. Four in ten place the United Kingdom top of their list of most attractive jurisdictions, closely followed by the United States which is cited by 33% as the most effective.

Three established offshore centres – Singapore, Cayman Islands and British Virgin Islands – complete the list of the top five jurisdictions. Although Cayman Islands also featured strongly in our jurisdiction rankings in 2015, the British Virgin Islands and Singapore both move into the top five for the first time.

Figure 4: Which of these jurisdictions have the most effective corporate and insolvency laws?



While the dominance of London and New York is to be expected, it should not be taken for granted. The established structures in these onshore markets may give them strong international favourability, but the changes already outlined above mean offshore jurisdictions are pushing hard to get more involved at a global level.

Eliminating local bias

To what extent are these results influenced by self-interest or local bias? Close analysis of our survey results finds that only 40% of respondents cite their home jurisdiction as the most attractive, meaning a majority chose another location.

For example, nearly half of the respondents who cited the United Kingdom as the most effective jurisdiction are based outside of the UK, while over a third of those based in the UK cite another jurisdiction as the most effective.

60%

select a location outside their home jurisdiction as having the most effective insolvency regime.

Offshore jurisdictions closing the gap

Although the United Kingdom and the United States dominate first and second preferences, offshore jurisdictions are not far behind.

More than half (56%) of those surveyed place the Cayman Islands among the top five most effective jurisdictions for cross-border insolvencies. BVI, Singapore and Hong Kong also score well, gaining 37% and 36% of top five preferences respectively.

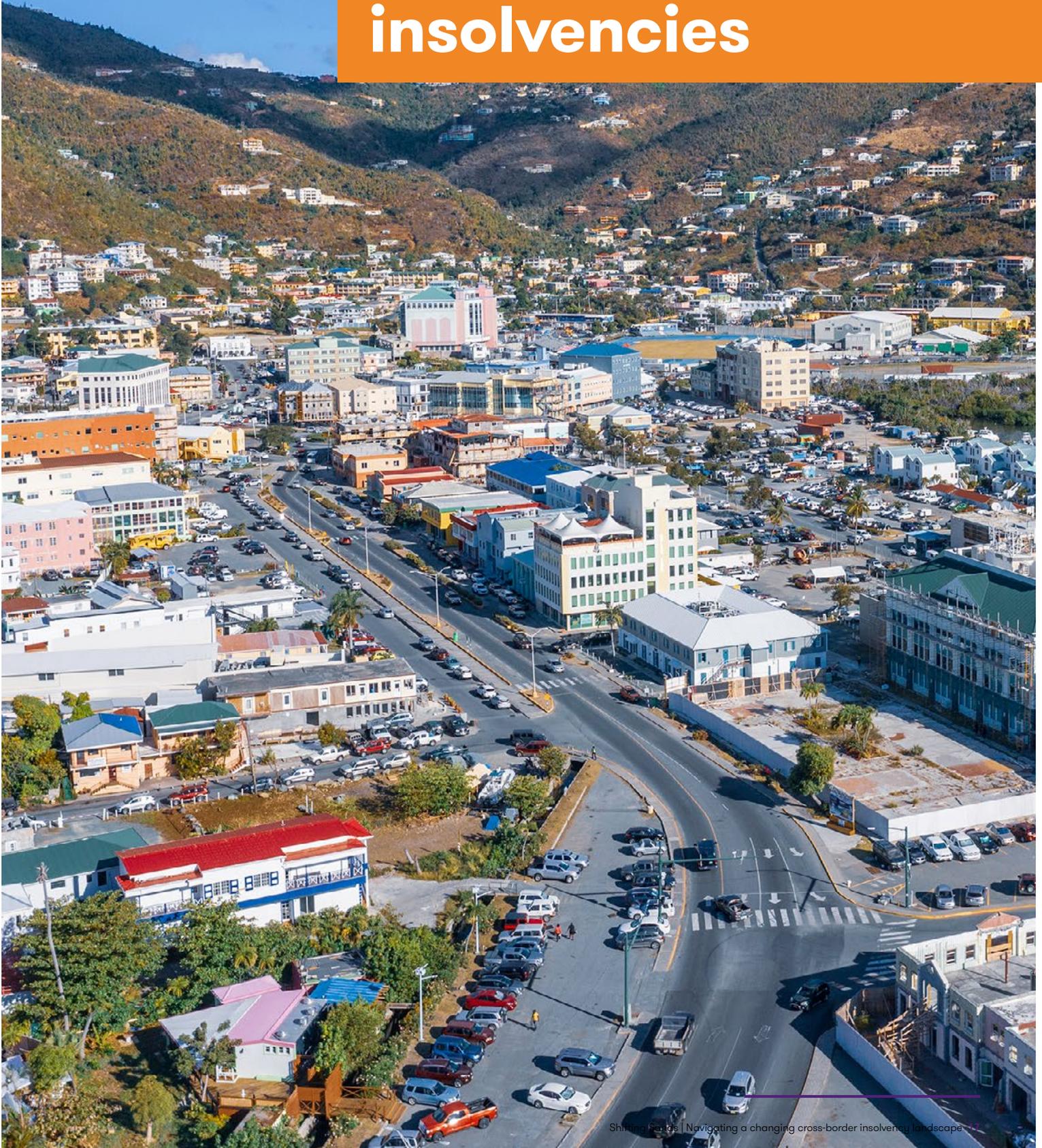
Offshore jurisdictions have closed the gap on United Kingdom and United States compared with our 2015 research across a range of metrics on our Attractiveness Index. Figure 5 shows that for the most important metrics – such as independence of local judiciary, quality of legal framework, and enforceability of judgments – offshore centres consistently score well and not too far behind the scores gained by onshore centres.

In the appendix to this report we provide a more detailed breakdown of views relating to the seven jurisdictions with the most responses in our online survey: BVI, the Cayman Islands, Hong Kong, Ireland, Singapore, United Kingdom and United States.

Figure 5: Scores out of 5 for seven jurisdictions on our Attractiveness Index

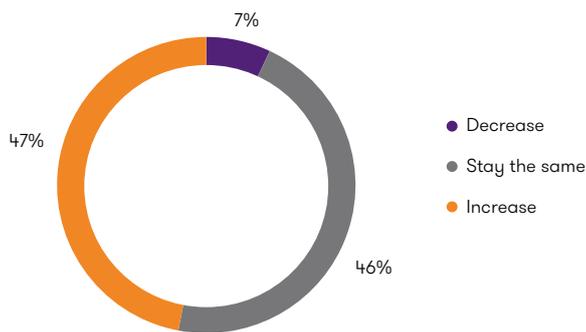
	Average	BVI	Cayman Islands	Hong Kong	Ireland	Singapore	UK	USA
Independence of local judiciary	4.6	4.6	4.7	5	4.6	4.8	4.8	4.9
Availability of local professional expertise	4.5	4.4	4.7	4.7	4.5	4.8	4.8	4.9
Availability of Counsel	4.4	4.4	4.3	4.4	4.4	4.5	4.7	4.9
Quality of legal framework	4.2	4	4.1	4	4.4	4.7	4.6	4.7
Enforceability of judgments	4.1	4.1	4	4.4	4.4	4.3	4.4	4.3
In jurisdiction professionals are part of global network of advisers	4	3.8	4	4.4	3.7	4.1	4.4	4.4
Decisions are recognised by other jurisdictions	4	4	3.9	4	4.4	3.8	4.3	4.4
Cost of hearings/obtaining judgments	3.5	3.6	3.4	3.7	3.8	4.1	3.5	3.1
Speed of hearings/obtaining judgments	3.5	3.2	3.4	3.3	3.6	4.4	3.7	4.1
Access to funding or contingency arrangements in the jurisdiction	3.3	3	3.1	4	1.4	3.4	4.1	4.2
Eligibility of foreign Counsel of advisers to appear in local courts	3.3	4.2	3.8	2.7	2.5	2.8	3.3	3.2

Five drivers of future cross-border insolvencies



During the early phase of the COVID-19 pandemic, 47% of the market practitioners responding to our online survey said insolvency volumes will increase over the next three years, with a further 46% saying that volumes would remain stable. The strongest increase was anticipated from work originating in Asia-Pacific, where 64% anticipated a future increase in activity over the next three years.

Figure 6: To what extent do you think the proportion of offshore insolvencies will change over the next three years?



Our research respondents identified five drivers that will contribute to this increase in activity:

- 1 COVID-19
- 2 Underlying macroeconomic vulnerability
- 3 Litigation funding
- 4 Brexit
- 5 Alternatives to litigation

Driver 1: COVID-19

One repercussion of the pandemic so far has been the sustained disruption to industry supply chains and the knock-on impact on consumer demand. Continued disruption in key sectors such as manufacturing, aviation and retail increases the likelihood that organisations with existing weaknesses on their balance sheets could fall into insolvency.

However, despite the sudden economic shock caused by the pandemic, its full effects are likely to take some time to filter through to the insolvency market. Andrew Chan, an insolvency lawyer at Allen & Gledhill in Singapore, recalls the experience of the global banking crisis:

“From the experience of the previous global recession, the full effects on insolvency activity will be felt six months to a year down the road. We might not know the full consequences for another two years as some sectors of the global economy are being supported in the short-term by government loans and job retention schemes.”

Driver 2: Underlying macroeconomic vulnerabilities

Even before the outbreak of COVID-19, underlying macroeconomic vulnerabilities were likely to bring about an increase in insolvency activity. The Chinese economy was beginning to cool prior to COVID-19 (its GDP grew by 6.1% in 2019 compared with 6.6% the year previously), and fears of a trade war with USA put pressure on sectors such as agriculture, metals and automotive. The pandemic has added to this pressure, even if the prospect of a US/China trade war has diminished with the election of President Biden in the United States.

Take the example of oil and gas. The first quarter of 2020 saw a global crash in oil prices precipitated by oversupply in the market and the reluctance of some major producing countries such as Russia to cut output. One insolvency barrister believes this is likely to lead to an increase in activity within the sector:

“The structural vulnerability in the oil and gas sector was noticeable even before COVID-19 depressed prices further. Oil companies are waking up to the fact that they will need to make fundamental changes to their business models. Global players in the oil and gas are likely to be among the most active sectors for restructuring work over the coming years.”

One possible side effect of the COVID-19 pandemic could be a relatively higher impact on mature economies compared to those that are still at a relatively early stage of development.

Driver 3: Litigation funding

A majority (82%) of survey participants say that the availability of litigation funding will lead to an increase in insolvency activity.

Analysis published by the daily London financial newspaper City AM in March 2020 suggests that the value of assets held by UK litigation funders has grown by more than 400 per cent over five years.

Our research participants based in the US also describe a growth in take up of available litigation funding. Greg Grossman of Sequor Law, for example, sees a similar picture emerging:

“Litigation funding has definitely become more prevalent in recent years. Litigation funding is like a can opener: more cases are being filed because litigation funding exists. I don’t see any reason why the present situation with litigation funding will recede in future.”

Not all jurisdictions currently permit litigation funding. However, that may change as regulators and policymakers in offshore centres look at the impact of litigation funding in onshore jurisdictions for sustaining activity. On Monday 14th December 2020, the Cayman Islands Parliament passed the Private Funding of Legal Services Act. The Act was Gazetted on 7th January 2021, but is not yet in force.

Driver 4: Brexit

Three-quarters of the respondents to our survey believe that Britain’s recent exit from the European Union (EU) will lead to an increase in cross-border insolvency work. Among those based in offshore jurisdictions, that figure rises to 82%.

It is possible that the break with the EU may be detrimental to the UK, bringing other jurisdictions into sharper focus when practitioners consider where to initiate proceedings.

As the EU pursues greater harmonisation between insolvency regimes within its members states, some cases of European-based restructuring or insolvency that may have previously been heard in the UK courts may find a home within the EU instead. Ireland may be a beneficiary of this work as may jurisdictions such as the Channel Islands which retain passporting rights directly into Europe.

74%

say Brexit will drive an increase in cross-border insolvencies

Driver 5: Alternatives to litigation

Forms of alternative dispute resolution are changing insolvency and restructuring activity. The use of mediation, even for complex insolvency cases involving cross-border elements, is becoming more commonplace.

Courts in some jurisdictions, increasingly encourage parties to pursue mediation to resolve disputes: Danny Ong of Rajah & Tann describes the position in Singapore:

“In the context of restructuring, it is becoming more common for the courts to encourage mediation. The specialist insolvency judges in Singapore often suggest the use of mediation - to assist the scheme manager to bridge the gaps between the parties. It is definitely gaining traction.”

For David Jones of Carey Olsen in Guernsey, mediation is increasingly adopted as a strategy by creditors or lenders to maximise their win-loss ratio:

“Banks will always want to assess what option will deliver the best outcome. They often do not want to crystallise losses in the short-term, or they may decide that the cost of the insolvency process is too high, and so it is better for them to seek a mediated solution.”



Navigating the Shifting Sands

Balancing local knowledge
with global expertise

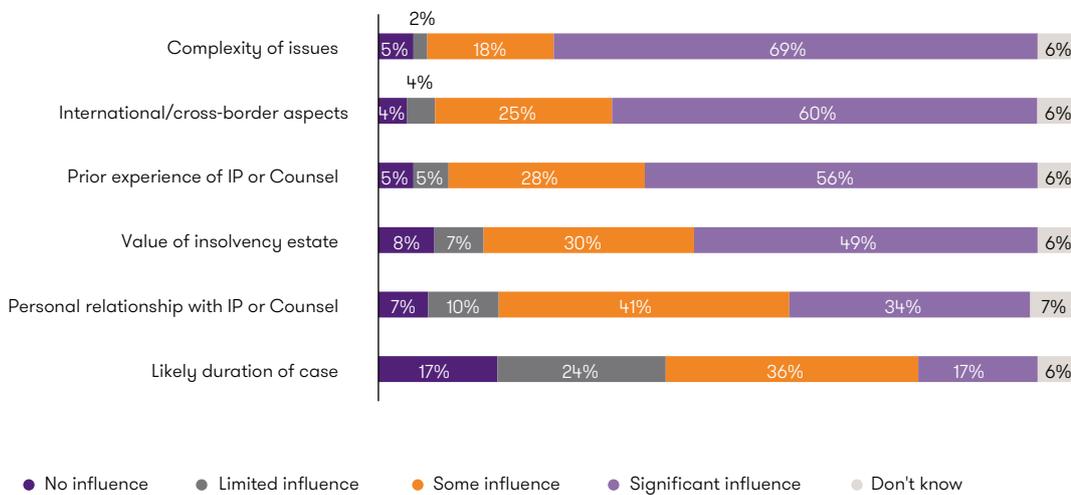
With insolvency and restructuring work anticipated to increase significantly over the short to medium term, how can market practitioners navigate the changing global landscape?

Our research reveals that local offshore practitioners recognise that support from onshore professionals will remain important. According to Peter Hayden of Mourant, greater familiarity among onshore professionals with offshore regimes adds a level of comfort to the proceedings, and may help to strengthen their position as leading global advisors:

“There are barristers in London who are now very familiar with the types of disputes we have in the Cayman Islands. That means it is often easier to bring them in now than it was in the past.”

In our survey, more than two-thirds (69%) say the complexity of issues in offshore insolvencies strongly influences their decision to instruct onshore counsel or insolvency practitioners. Having international or multijurisdictional elements is also cited as a major reason for having onshore experts involved.

Figure 7: What impact do the following factors have on your decision to instruct UK-based Counsel or insolvency practitioners in relation to offshore insolvencies?



One positive change arising from the COVID-19 pandemic is that the increased adoption of video conferencing to facilitate remote working means that it is easier than ever before for experts based in different jurisdictions to work collaboratively on cross-border matters.

Progress on international collaboration and consistency

In 2015 we concluded our report *From Discord to Harmony* with a call for concerted efforts to foster greater collaboration and harmonisation across borders. Six years ago, 85% of our survey participants agreed that courts in different jurisdictions should collaborate more to make multi-jurisdictional insolvencies fairer and more efficient.

In *Shifting Sands* we have highlighted areas where significant progress has been made. Scores for offshore centres have improved and the gap has closed with onshore centres. Our interviewees tell us that the process of managing multijurisdictional insolvencies is becoming easier with greater certainty of process and application of international standards.

Five areas for future focus

Although significant progress has been made, our research participants highlight five areas where they would like to see further progress:

1 Further harmonisation around insolvency processes and timings

The variability of processes, listing timetables and hearing arrangements remain substantial barriers to speedy resolution. Although much has improved, further change is required to achieve greater certainty of process.

2 The appointment of further specialist judges

The appointment of specialist insolvency judges in offshore jurisdictions has been welcomed and market participants would like to see this appointment process accelerated. Greater judge-to-judge networking and ideas sharing is encouraged.

3 Introduction of legislation where UNCITRAL model law not yet adopted

The adoption of UNCITRAL model law has been hailed as a success. Yet market participants point to important offshore centres such as Ireland and Cyprus where this has yet to be incorporated into the legislative framework.

4 A more consistent litigation funding regime

The provision of litigation funding remains inconsistent. Market participants would like to see provisions rolled-out across a wider range of jurisdictions to provide greater certainty about funding arrangements for multijurisdictional work.

5 Greater collaboration between local and global experts

As offshore jurisdictions become more mature, this will provide more opportunities for collaboration between experts within offshore jurisdictions and their counterparts onshore. Local expertise supported by access to global networks is considered vital for the effective resolution of cross-border matters, and the widespread adoption of video conferencing because of COVID-19 should make this easier to achieve.



Research methodology

Grant Thornton and South Square partnered with independent consultancy Meridian West to capture views from 150 experienced market practitioners through an online survey.

More than three-quarters of those surveyed (79%) are from law firms, with insolvency practitioners, bankers and barristers making up the remainder of respondents. Survey participants have, on average, 18 years of experience carrying out cross-border insolvencies.

More than 25 jurisdictions were represented in our survey, with 31% of survey participants based in onshore centres such as the United Kingdom and United States and 69% based offshore.

Figure 8: What type of organisation do you work for?

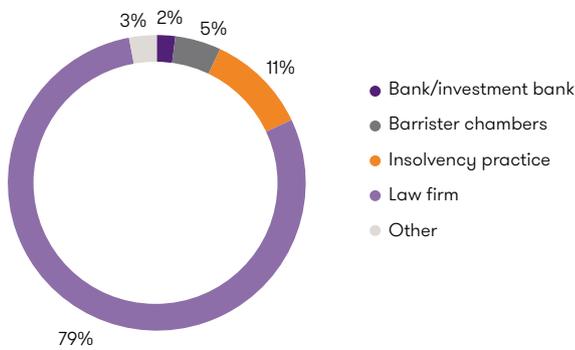
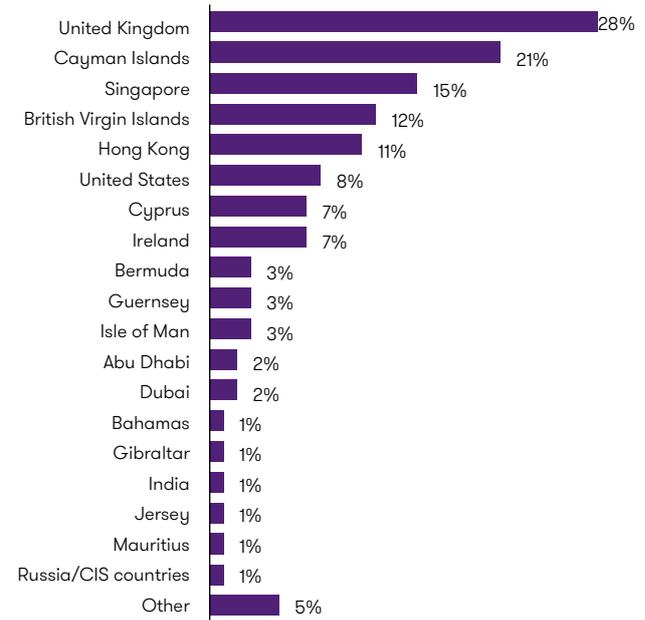


Figure 9: In which location(s) are you based?



In addition to the online survey, additional insights were captured through 12 in-depth interviews with:

- **Adam al Attar**, South Square, United Kingdom
- **Alex Henderson**, Dentons, Cayman Islands
- **Andrew Chan**, Allen & Gledhill, Singapore
- **Danny Ong**, Rajah & Tann, Singapore
- **David Jones**, Carey Olsen, Guernsey
- **Eloise Matsui**, Stephenson Harwood, Hong Kong
- **Greg Grossman**, Sequor Law, United States
- **Karen McMaster**, Milbank, United Kingdom
- **Philip Hertz**, Clifford Chance, United Kingdom
- **Peter Hayden**, Mourant, Cayman Islands
- **Ruairi Rynn**, William Fry, Ireland
- **Thomas Rhoner**, Pestalozzi, Switzerland

Appendix

Spotlight on seven jurisdictions



British Virgin Islands

In our 2015 report, *From Discord to Harmony*, research participants highlighted difficulties associated with the lack of cross-border provisions within British Virgin Islands. Challenges such as a lack of local resource and issues around the disqualification of directors resulted in BVI scoring lower than average for court infrastructure and listing process.

4.6 out of 5

score on Attractiveness Index for independency of local judiciary

4.1 out of 5

score on Attractiveness Index for enforceability of judgments

3.2 out of 5

score on Attractiveness Index for speed of hearings/judgments

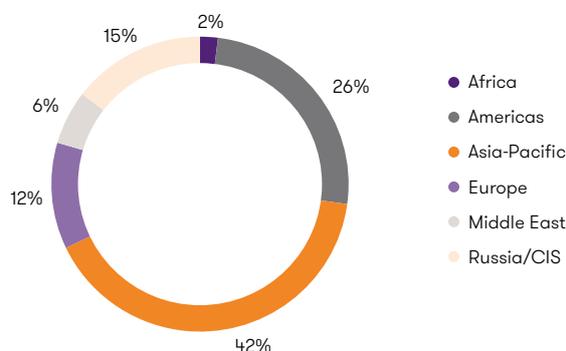
3.0 out of 5

score on Attractiveness Index for access to litigation funding

Our survey finds that:

- BVI has among the most geographically diverse spread of insolvency work, with 42% originating from Asia-Pacific region, 26% from Americas and 15% from Russia.
- Over the next three years, 80% of the practitioners surveyed in BVI believe that there will be an increase in work originating from Asia-Pacific region. Seven in ten believe work volumes from Africa will increase. More than half believe work volumes from Russia will increase.
- Scores for BVI show marked improvements on 2015, though the speed of hearings is rated noticeably low at 3.2 out of 5.0.
- Issues with the quality of judges and the time taken to deliver judgments are cited anecdotally by survey respondents.
- Survey participants would like to see the lack of familiarity with local practice and procedure addressed by increased communication and appointment of more experienced judges.*

Figure 10: What proportion of BVI's insolvencies originated from the following regions?



* This comes from a mix of comments received from survey participants based in BVI.

Cayman Islands

In the five years since our previous research, the Cayman Islands has witnessed a growing diversity of insolvencies, driven in part by an increase in the attractiveness of the jurisdiction to High Net Worth individuals and corporate structures which appears to have created more Cayman anchored opportunities.

4.7 out of 5

score on Attractiveness Index for independency of local judiciary

4.0 out of 5

score on Attractiveness Index for enforceability of judgments

3.4 out of 5

score on Attractiveness Index for speed of hearings/judgments

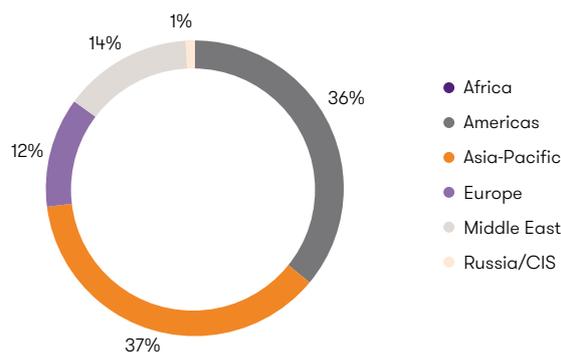
3.1 out of 5

score on Attractiveness Index for access to litigation funding

Our survey finds that:

- There is an equal split in cross-border insolvencies originating from Asia-Pacific (37%) and Americas (36%). Significant inflows of work also originate from Middle East (14%) and Europe (12%).
- Although only representing a small proportion of insolvencies today, 73% anticipate workflow from the Middle East will increase over the next three years.
- Although the Cayman Islands is rated highly across most measures of jurisdiction attractiveness, the score for access to funding is below the global average at 3.1 out of 5.0. The position regarding litigation funding within the Cayman Islands is being remedied by new legislation which is in progress.
- Cost of hearing cases is also cited as a challenge by survey respondents and is seen as prohibitive for smaller case files.

Figure 11: What proportion of Cayman Islands' insolvencies originated from the following regions?



Hong Kong

Hong Kong continues to score well in our jurisdiction Attractiveness Index. However, the absence of any legislated restructuring regime, and the recent moves by the National People's Congress to implement a national security law (after our online poll of participants), may weaken perceptions over the long-term.

5.0 out of 5

score on Attractiveness Index for independency of local judiciary

4.4 out of 5

score on Attractiveness Index for enforceability of judgments

3.3 out of 5

score on Attractiveness Index for speed of hearings/judgments

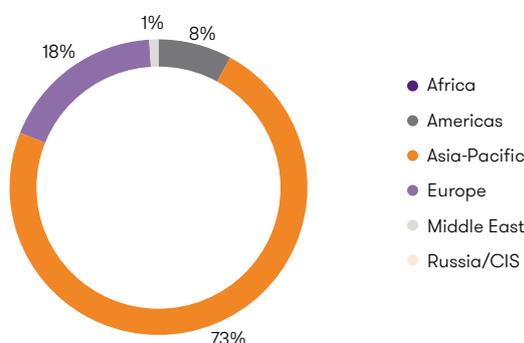
4.0 out of 5

score on Attractiveness Index for access to litigation funding

Our survey finds that:

- Hong Kong is a strong regional hub for insolvency and restructuring work originating out of Asia, with three-quarters (73%) of the work undertaken by survey participants in Hong Kong originating from Asia-Pacific compared with just 18% from Europe and 8% from Americas.
- Changes in regional diversity of insolvency and restructuring work are expected to be slower in Hong Kong than other offshore jurisdictions in our survey. While 71% anticipate an increase in work from Asia, increases from other regions are anticipated to be much smaller. This is not surprising given Hong Kong has historically been regarded as a conduit for mainland China and the Asia-Pacific region.
- Despite its position as a regional finance hub today, research participants believe more insolvency work could move from Hong Kong to mainland China, particularly Shanghai, over the next decade.
- A score of 2.7 for eligibility of foreign Counsel, or other advisers, to appear in local courts suggests it is some way off other jurisdictions on this measure
- Anecdotally there are suggestions that difficulties with recognition of foreign advisers may be changing.

Figure 12: What proportion of Hong Kong's insolvencies originated from the following regions?



Ireland

Although Ireland has emerged strongly over the last five years as a regional insolvency hub, the decision not to adopt UNCITRAL model law was highlighted as a limitation by participants in our research, making it difficult to align parallel insolvency rescue procedures with other jurisdictions.

4.6 out of 5

score on Attractiveness Index for independency of local judiciary

4.4 out of 5

score on Attractiveness Index for enforceability of judgments

3.6 out of 5

score on Attractiveness Index for speed of hearings/judgments

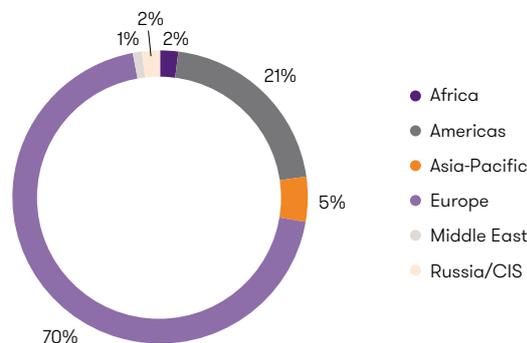
1.4 out of 5

score on Attractiveness Index for access to litigation funding

Our survey finds that:

- Ireland mainly caters towards domestic insolvencies today, with 70% of insolvencies originating out of Europe.
- The proportion of complex, cross-border insolvencies is expected to increase in future. For example, although just 5% of the insolvency workflow into Ireland originates from Asia-Pacific region today, 78% of those surveyed expected that level to increase over the next three years.
- Local practitioners believe Brexit may boost Ireland's prospects as a leading insolvency jurisdiction, as it is hoped that people who would have automatically chosen London as their preferred jurisdiction will take another look at the Irish system.
- If Dublin is to threaten London's prominence as an international insolvency and restructuring hub, our survey participants suggest it will need to address practical issues such as the eligibility of foreign counsel to appear in local courts and access to litigation funding. In both areas Ireland scores noticeably low (2.5 and 1.4 out of 5.0).

Figure 13: What proportion of Ireland's insolvencies originated from the following regions?



Singapore

Five years ago, in *From Discord to Harmony* Singapore did not feature among our research as a leading global insolvency centre. However, it was anticipated by local practitioners that Singapore's reputation as an international jurisdiction would increase. Since 2015 local judiciary and policymakers have made a concerted effort to elevate Singapore as a credible global insolvency hub.

4.8 out of 5

score on Attractiveness Index for independency of local judiciary

4.3 out of 5

score on Attractiveness Index for enforceability of judgments

4.4 out of 5

score on Attractiveness Index for speed of hearings/judgments

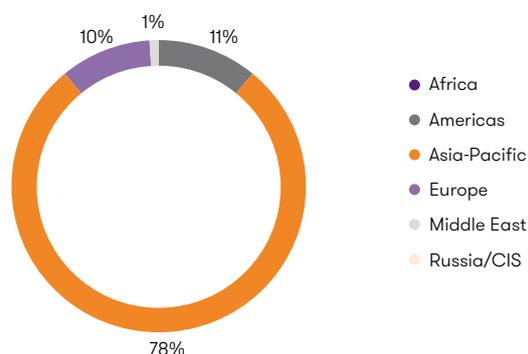
3.4 out of 5

score on Attractiveness Index for access to litigation funding

Our survey finds that:

- Singapore is the jurisdiction with the third most effective insolvency laws after United Kingdom and United States.
- Singapore's scores for the factors that matter most – independence of local judiciary, quality of legal framework, and enforceability of judgments – all sit above global averages and challenge the scores achieved by leading onshore centres.
- However, Singapore has some way to go before it can be considered a truly global restructuring and insolvency hub. Today over three-quarters (78%) of the work originates from Asia, with relatively small proportions from America (11%) and Europe (10%).
- Although work is likely to become more globally diverse in future, the biggest increases are expected from within the region. 88% believe workflow from Asia will increase compared with 75% and 65% who believe work from Europe and Americas will increase.

Figure 14: What proportion of Singapore's insolvencies originated from the following regions?



United Kingdom

The UK maintains its position in our Attractiveness Index as the jurisdiction with the most effective global insolvency regime. However, in the five years since *From Discord to Harmony* our survey respondents cite greater uncertainty about the UK's future. The primary cause of this uncertainty is Brexit.

4.8 out of 5

score on Attractiveness Index for independency of local judiciary

4.4 out of 5

score on Attractiveness Index for enforceability of judgments

3.7 out of 5

score on Attractiveness Index for speed of hearings/judgments

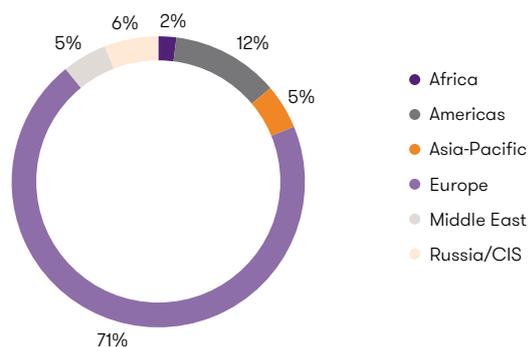
4.1 out of 5

score on Attractiveness Index for access to litigation funding

Our survey finds that:

- Although the UK services a large proportion of international insolvencies, a large majority (71%) of the workflow into UK originates from Europe.
- Future workflows into the UK will be the most uncertain of all the major jurisdictions examined in our survey. 44% of those surveyed expect the amount of restructuring and insolvency work originating from Europe to decrease over the next three years, against 33% who predict an increase.
- The UK is rated by 41% as the jurisdiction with the most effective insolvency laws globally. More than 90% of the professionals surveyed place the UK among their top five most effective jurisdictions.
- Across our jurisdiction Attractiveness Index the UK exceeds global averages in nine of the 11 metrics tested, with a significant lead for access to funding, local professional expertise and quality of legal framework.

Figure 15: What proportion of United Kingdom's insolvencies originated from the following regions?



United States

As in 2015, the USA presents a strong showing on our jurisdiction Attractiveness Index and remains a dominant hub for workflows from the Americas and Europe. However, survey participants are uncertain around how the the economic priorities of the incoming Biden administration may impact future bankruptcy volumes in the US.

4.9 out of 5

score on Attractiveness Index for independency of local judiciary

4.3 out of 5

score on Attractiveness Index for enforceability of judgments

4.1 out of 5

score on Attractiveness Index for speed of hearings/judgments

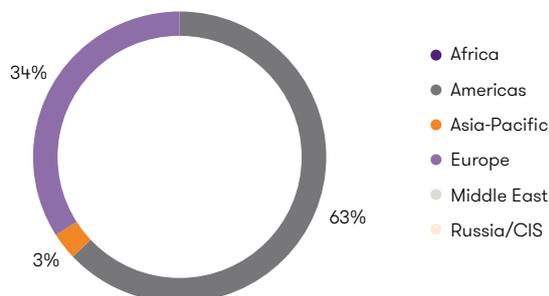
4.2 out of 5

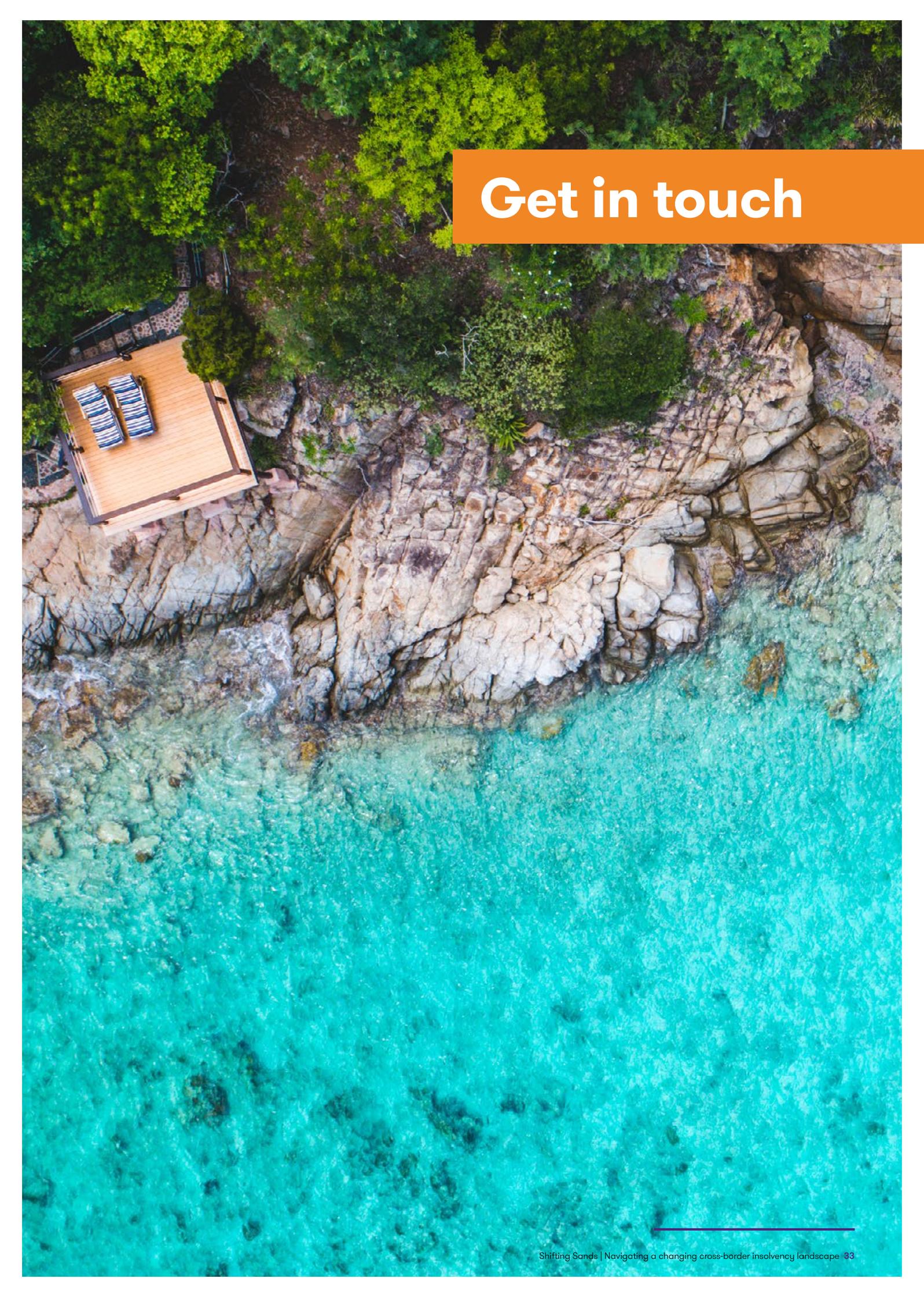
score on Attractiveness Index for access to litigation funding

Our survey finds that:

- Insolvency workflows into the United States are currently skewed regionally, with two-thirds (63%) of work originating from Americas. Only a very small proportion (3%) originates from Asia, with the remainder (34%) originating from Europe.
- Market participants see some change in the global diversity of insolvency work: while 69% and 50% anticipate increases in work from Europe and Americas respectively, two-thirds (67%) anticipate workflow from Asia to increase.
- 33% of survey participants in our online survey select United States as the jurisdiction with the most effective corporate and insolvency laws. This is the second highest behind United Kingdom. In total 83% rate US within their top five most effective jurisdictions.
- A strong preference for the United States is supported by consistently high scores across our Attractiveness Index. The US scores consistently well across all metrics, beating the global average in nine of the 11 metrics tested.

Figure 16: What proportion of United States' insolvencies originated from the following regions?



An aerial photograph showing a wooden deck with two striped lounge chairs on a rocky cliffside. The cliff is composed of light-colored, layered rock formations. Below the cliff, the water is a vibrant turquoise color, with some rocks visible beneath the surface. The top of the image is filled with dense green foliage.

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