

BVI Conference

27th April 2023

BVI International Arbitration Centre – 9.20am to 5.30pm

Brandywine Estate – evening cocktail reception from 5.30pm (transport provided)

Attendance is free for BVI Practitioners, but registration is essential – [PLEASE CLICK HERE](#)

9.20am Registration & coffee

9.50am Welcome Address by **Andrew Twigger KC** (ChBA Chair) & **Michael Gibbon KC** (International Subcommittee Chair)

10am An international comparative analysis of hot insolvency topics

- Winding up foreign companies – the three core requirements and how the sufficient connection test is applied internationally. Lessons from Hong Kong following Shandong Chenming Paper Holdings Limited v Arjowiggins HKK 2 Limited [2022] HKCFA 11.
- Just and equitable winding up in courts around the world: including *Chu v Lau* [2020] UKPC 24, *Re Klimvest plc* [2022] EWHC 596 (Ch) and *Financial Technology Ventures II (Q) LP v ETF Capital Limited* [2021] JCA 176.
- How do courts approach commencement of liquidation proceedings when there is an arbitration clause?
- Two recent decisions, *Sian Participation Corp (in liquidation) v Halimeda International Limited* (Eastern Caribbean Court of Appeal) and *Kenworth Industrial Limited v Xin Gang Power Investments Limited* (BVI High Court), are contrasted with the approach of the English courts.

Sajid Suleman (No5 Chambers) & **Hermione Williams** (New Square Chambers)

10.40am Gateway (25) – Extra Territorial Orders

- Introduction of new gateway (25) in English CPR for service out of Norwich Pharmacal, Bankers Trust and other disclosure orders against (innocent) third parties – a significant expansion?
- Implications for the BVI – advent of extra-territorial disclosure orders by the English courts?
- Practical considerations - mechanisms for domestication of English disclosure orders in the BVI and other barriers.

Philippe Kuhn (39 Essex Chambers)

11am Proprietary Claims

- Payment of legal fees where a Defendant is subject to a proprietary injunction and has no 'clean funds', the potential liability of a Defendant's lawyers to the Claimant as recipient of the proceeds of fraud, and the denial of representation to such Defendants.
- Whether the usual injunction carve out, which allows the Defendant to spend a reasonable sum on legal fees, protects the Defendant's lawyers (spoiler: it does not): *United Mizrahi Bank Ltd v Doherty* [1988], *Carl Zeiss Stiftung v Herbert Smith (No. 2)* [1969].
- The Mizrahi solution, the Gee solution, and a suggested public policy solution.

Iain Quirk KC (Essex Court Chambers)

11.30am Morning Coffee

12pm BVI Business Companies Act – Amendments & Beyond

- Increased transparency in BVI company information – the impact on litigation abroad, especially on interim remedies.
- Struck off/restored BVI companies: a new lifeline or hindrance in offshore litigation?
- A glimpse into the future: transparency vs privacy, striking the right balance.

Chair: **Andrew de Mestre KC** (4 Stone Buildings)

Panel: **Daria Gleyze** (Three Stone), **Zachary Kell** (Radcliffe Chambers), **Lara Kuehl** (Selborne Chambers)

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1pm

Lunch

2.15pm

Changing the terms of trust

- Amendment after Wong - what can you do with powers of amendment now that the Privy Council has abolished the substratum?
- Where to go for a variation – which are the change-friendly jurisdictions?
- Using other powers – powers of advancement, transfer and revocation.

Nicholas Le Poidevin KC (New Square Chambers)

2.45pm

Crypto and Financial Sanctions: jurisdiction, regulation, and tax

- A whistlestop tour of taxation of crypto assets.
- Russia sanctions: key developments in the offshore context.
- Where in the world: jurisdiction and governing law for crypto-disputes.

Harriet Brown (Old Square Tax Chambers), **Sophia Hurst** (Essex Court Chambers) & **Emile Simpson** (Pump Court Tax Chambers)

3.45pm

Afternoon Tea

4.15pm

The Duomatic Principle

- Why is the Duomatic principle (Privy Council decision in *Byers v Chen*) important for BVI practitioners?
- Recent decisions of the Eastern Caribbean Court of Appeal in *Fang Ankong v Green Elite and Arrowcrest v VTB Bank*.
- Evaluation and future development of the principle.

Alexander Cook KC (4 Stone Buildings)

4.45pm

Good faith in the commercial context

- Considering the Court of Appeal decision in *Compound Photonics* [2022] EWCA Civ 1371:
- The nature of the obligation requiring good faith in the commercial context.
- The considerations identified as relevant to the construction of good faith clauses.

Ian Clarke KC (Selborne Chambers)

5.15pm

Conclusion

Andrew Twigger KC (ChBA Chair) & **Michael Gibbon KC** (International Subcommittee Chair)