In this edition of Vannin Capital’s In Conversation Series, London Managing Director, Rosemary Ioannou discusses the development of third party funding in offshore financial centres with John O’Driscoll, Partner at Walkers Global in London.

Rosemary Ioannou (RI): Walkers London office performs a unique function as a firm in the UK. What is the focus of your practice in the UK?

John O’Driscoll (JO): A little bit about Walkers, we are a leading offshore firm with offices in ten jurisdictions including London. We practice the laws of BVI, Cayman, Guernsey, Jersey, Ireland and Bermuda (where we operate as Taylors in association with Walkers).

The London market is a very important market for the firm. Our office in London was established in 2001 to provide time zone sensitive advice to our European based clients requiring BVI and Cayman law advice. Since 2001 we have had corporate, finance and funds capability in London. About six years ago, we saw an opportunity to set up an insolvency and dispute resolution (“IDR”) team in London when I came on board. The team now stands at five and works closely with our home offices, particularly in BVI and Cayman, on litigation and insolvency-based matters. As you know, litigation matters can be long running and our clients welcome having their lawyers present in London. Being in London also makes it easy to work alongside leading counsel from chambers in the City and City law firms. When proceedings take place in BVI and Cayman we work with our teams there to ensure a seamless service for our clients. Our other European offices in Dublin, Jersey and Guernsey provide advices to our clients requiring local law expertise involving those jurisdictions.

RI: What types of cases are most frequently crossing your desk at the moment and from which jurisdictions?

JO: We are seeing enforcement actions and shareholder disputes in the oil & gas, mining and shipping space. For example, right now we are working on the insolvency of a global shipping group which has become contentious in Africa and many other jurisdictions where assets are being recovered. We are working with liquidators who have been appointed...
over mines in South America and Africa.
Very often you will find that BVI or Cayman companies sit as holding companies in large international group structures. Appointing a liquidator at the top of the structure can become important to a stakeholder’s enforcement strategy. We often work with clients who require funding to help recover assets or to pursue misfeasance actions against directors or managers.

RI: Is this different to the types of cases / jurisdictions that you were seeing 5 years ago?

JO: Five years ago, we were still dealing with the fallout of the global financial crisis in 2008. We have acted on some of the largest collapses such as Lehman and global frauds such as Madoff. Our focus in London is on generating new opportunities for the firm such as international insolvencies or fraud cases which are being run out of London.

RI: You are based in London but have a broad international practice, are there particular areas or jurisdictions in which you are seeing the demand for funding grow most keenly?

JO: The jurisdictions we’re seeing most activity in are CIS, Russia, Africa and South America where funding solutions may be required to take control of assets or to pursue claims in these jurisdictions.

RI: Is your sense that clients are more interested in funding than they were 5 years ago? Is this the case globally or are there pockets of knowledge in specific jurisdictions?

JO: Yes, undoubtedly so. We are seeing more third-party funding agreements in Cayman in the context of companies in official liquidation. Liquidators in Cayman have a statutory power to sell the “fruits of an action” and the Courts are familiar with sanctioning funding agreements in this area. There are certain limitations on the claims that can be funded by a liquidator. For instance, in a liquidation only those claims which vest in the company itself and can be brought in the company’s
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name can be funded by a third-party funder. Additionally, a liquidator will not be permitted by the court to enter into a funding agreement which allows the third party to control and interfere with the litigation. However, it is possible for a liquidator upon sanction by the court to assign a cause of action where the price is a portion of the proceeds of the action.

RI: What types of clients are you seeing are most attracted to funding?

JO: In my experience most queries are raised by liquidators who have been appointed over an estate with insufficient funds to pursue litigation claims.

RI: How do you see funding influencing your practice (positively or negatively) over the next few years?

JO: I see funding as a positive. Increasingly my clients are becoming more sophisticated in putting funding agreements in place for the benefit of creditors in an estate. Without such funds creditors in these circumstances would have to try and fund the liquidator themselves which is often not practical for them to do. In Cayman, a bill has been drafted which if enacted would codify the way conditional fee arrangements and funding agreements are dealt with as well as repealing any offences under the common law of maintenance and champerty.
RI: What are your predictions for your practice, beyond the influence of funding, for 2018?

JO: Certain sectors in the UK such as real estate, retail and healthcare are under pressure which may mean that we are brought in to advise on the offshore aspects of distressed structures in these areas. For instance, we assisted on a large-scale restructuring of a hospital group with multiple hospitals in the UK which were held by BVI holding companies. We were also recently instructed on a real estate fraud with assets based in the UK where funding became one of the key issues to resolve.

RI: You have recently established a group in London called RAIIDAR, which, to date, has been a great success, what is the purpose of that group?

JO: Yes, RAIIDAR was launched last year by me, Mark Griffiths from Kobre & Kim and Colin Diss of Grant Thornton. The aim is to bring together up and coming professionals in litigation and restructuring for monthly events in the City. We have been amazed at how quickly the network has grown and the positive feedback we have received. There seems to be a gap in the market for a refreshing alternative to what else is out there. Our plan for 2018 is to keep the momentum going and to build out and diversify our membership. So far members have joined through word of mouth, but we will be formalising the membership process and launching a website this year. Thank you to Vannin for helping to support our events.
BIOGRAPHIES

Rosemary Ioannou
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Rosemary has been at the forefront of the development of the dispute resolution funding industry over recent years. She has expertise funding insolvency claims, competition claims and group actions both in the UK and across the globe.

Rosemary is a solicitor of the Courts of England and Wales. Before joining Vannin, she was a Senior Associate in the Litigation department at Allen & Overy LLP in London, where she trained and qualified. While at Allen & Overy, Rosemary spent time on secondment at the Court of Appeal as Judicial Assistant to Lord Justice Dyson (now Lord Dyson) and at TUI Travel Plc.

Rosemary has extensive experience in a wide range of corporate and financial disputes both in England and internationally, acting for large corporations, banks and other financial institutions. She also has expertise in managing complex cross jurisdictional disputes both as a practicing solicitor and funder.

She regularly contributes to articles and presents on a wide range of topics in connection with dispute resolution funding, with a focus on the benefits of funding to well capitalised claimants, the global growth of funding and its impact on the dispute resolution landscape and the development of group actions across the world.

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John heads up the Insolvency and Dispute Resolution (IDR) team at Walkers in London and works closely with his colleagues in Cayman and the British Virgin Islands offices. John specialises in contentious and non-contentious insolvency work and international disputes.

John advises on all forms of formal appointments of insolvency officeholders in the British Virgin Islands and the Cayman Islands and advises creditors, debtors, private equity and hedge funds and other stakeholders. He has worked on aspects of large international restructurings including MF Global, Lehman Brothers and Nortel. John has significant experience in cross border litigation matters having worked on many multi-jurisdictional disputes.

Prior to his move to London to launch the London IDR team, John also worked in the firm’s Cayman Islands and British Virgin Islands offices.

John has recently been described by Legal 500 as an ‘up-and-coming star in the making’.
About Vannin Capital

Established in 2010, Vannin Capital is the global expert in legal finance, supporting law firms and corporations in the successful resolution of high-value commercial disputes.

From single case funding, to portfolio finance and enforcement arrangements, we offer creative capital solutions that are tailored to our clients’ needs.

Our global team of legal and financial experts cover the key commercial litigation and arbitration centres from our offices in London, Jersey, Paris, New York, Washington, Sydney and Melbourne. More than just capital, we combine global experience with local knowledge to deliver the highest standard of service and expertise to our clients around the world.

A market leader, we are a member of the Association of Litigation Funders of England and Wales (ALF), conducting our business to the highest standards in line with its code of conduct.

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