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Modernisation of Cayman investment laws

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The Cayman Islands are viewed as one of the premier offshore jurisdictions and in particular can lay claim to be the offshore hedge fund capital. The Islands' continued success may be attributed to a number of factors including tax neutrality, an abundance of high quality local service providers and a stable legislative and regulatory system.

The legislature of the Cayman Islands, in the face of increasing international competition, has also proved flexible and responsive to calls for changes. These changes aim to increase flexibility, strengthen the Islands' reputation overseas and better serve international clients conducting business both in Cayman and around the world.

In the last six months, important revisions have been made to the Mutual Funds Law, the Banks and Trust Companies Law, and the Insurance Law. The administering authority for each of these laws is the Cayman Islands Monetary Authority (CIMA). Some of the key amendments to these important laws are summarised below.

Mutual Funds Law (November 2006)

1. The minimum aggregate subscription per investor for a fund to qualify as a registered fund was doubled to \$100,000 in light of an IMF recommendation. Most schemes qualifying to register have investment well in excess of this and the effect on the industry is expected to be low.

2. Cayman-based administrators can now administer schemes domiciled overseas without having to register them under the Mutual

Funds Law. Industry feedback is mixed. Some administrators expect no significant change in their level of business; others welcome the opportunity to chase an overseas book of business more freely.

3. The CIMA can now formally waive the ordinary requirement that a fund file its audited financial statements annually. The waiver is an important addition to the CIMA's discretions under the law. It is likely to be used in limited circumstances but will, for example, assist funds that delay launch to avoid unnecessary audit fees.

Banks and Trust Companies Law (November 2006)

1. A capital funds and capital adequacy requirement has been introduced. While the law features a minimum net worth requirement for licence holders, the CIMA can now formally require the holder of a banking or trust company licence to hold a certain proportion of its capital in cash or cash equivalent instruments. In addition, a capital adequacy ratio of 10% is now required for all Cayman companies that hold a banking licence. The CIMA has discretion to alter that ratio.

2. There are additional statutory responsibilities for auditors of licence holders. Licence holders are required to file certain audited accounts annually. The latest additions to the law confirm the whistle-blowing responsibilities of the auditors if, during the course of an audit, they become aware of or suspect that the licensee is insolvent, failing to maintain adequate accounts, carrying on business to the detriment of its investors or creditors, acting fraudulently or in an otherwise criminal manner, or failing to comply with the law.

3. The scope of prohibited activities applicable to licensees has been broadened. Additional controls have been placed on bank licence holders in taking significant holdings

in subsidiary undertakings and investing in real estate.

4. There is a statutory requirement to segregate trust and proprietary assets. The requirement to segregate client money is now specifically provided for trust companies which must also obtain adequate professional indemnity insurance or other financial cover to the satisfaction of the CIMA.

Insurance Law (November 2006)

1. Reserve assets for both general and long term business are to be held upon trust, the terms of which are to be approved by the CIMA and which must provide for the exclusive use of the reserves in connection with the insured's obligations. The terms must also prohibit the creation of any charge, lien, mortgage, security or other encumbrance over those reserve assets. The insurer is to report to the CIMA annually to confirm the maintenance of the reserves.

2. Statutory protection is now provided against the claims of third party creditors, other than the policy holder or beneficiary, over the proceeds paid or payable under a policy for long-term business unless the policy was entered into for the benefit of the creditors. The position of the insurer is protected by an amendment providing that, on payment of the proceeds in accordance with these provisions, the insurer is discharged from any further liability in respect of the insurance agreement or duties in respect of the application of the proceeds.

The future

The Cayman Islands enjoy a place among the leading offshore jurisdictions, which collectively provide extensive benefits to the world economy, by enabling the more efficient use of capital and enhancing the investment capability of private individuals and multinational corporations.

The legislative framework outlined above will be kept under constant review, so that the Cayman product continues to meet the needs of the market. The trend over recent years has been towards greater sophistication of the products on offer, combined with the continuing evolution of the core products. There has also been a movement towards greater transparency and international scrutiny of business in the Cayman Islands, which has tended to increase the jurisdiction's credibility for the high-quality business it seeks to attract.

Financial and corporate

Recommended firms

Tier 1

Maples and Calder
Walkers

Tier 2

Ogier

Tier 3

Appleby
Campbells
Solomon Harris

Tier 4

Conyers Dill & Pearman
Mourant
Stuarts Walker Hersant
Turner & Roulstone

Tier 5

Charles Adams Ritchie & Duckworth
Truman Bodden & Co

Volatile markets are fertile ground for hedge funds. So while deal volumes have dropped, and CDO sales are down 25%, a number of distressed opportunity funds have rushed to establish themselves in the Caymans to take advantage of the situation. These funds have snatched assets at bargain prices, and are now waiting for the markets to return before cashing in on their investment.

Hedge funds look to invest in emerging markets such as India and China, but also closer to home. "Latin America, and Brazil specifically, continues to be a tiger," says one local fund attorney. Many long-shore fund investments target São Paulo's Bovespa index, which has attracted attention because of its solid fundamentals. The strength of the Brazilian economy means that returns should outpace those from other alternative markets.

Lawyers are also busy advising funds that are restructuring as a result of the US economic downturn. Some are trapped in a vicious circle:

brokers impose high margin calls that the funds find difficult to meet, and devalue the funds, subjecting the fund yet again to higher margin calls.

Funds also need advice on gating provisions, or suspension of redemptions, even though most only partially liquidate assets. The consensus is that the bottom of this trend has yet to be reached, and that reorganisations will likely continue. Bad news for funds, but it leaves plenty of opportunities for Cayman's law firms.

Structured finance originations have dropped off completely. The market for CDOs is at a standstill as investors wait for stability to return. But Islamic financing is active, as are investments coming from the Middle East. Specifically, property funds have attracted a lot of Middle Eastern investors that are eager to explore opportunities for investing in European commercial property.

When the market does rebound, structured finance work is expected to recover, although the return of mortgage-backed securities is in doubt. As in other markets, investors will want more thorough due diligence on underlying assets. More significantly for financial lawyers, products will need to be more creative and innovative. That will certainly drive more work their way.

Maples and Calder

"Maples and Calder continues to be the gold standard," says a competitor, "and they have a big responsibility for developing the Cayman Islands into the financial centre that it is today." Clients consider the firm to be one of the Cayman Islands' most innovative: "Partners at the firm are very creative, and try to come up with answers to questions that don't always have easy answers," says one.

The firm lives up to its reputation, having participated on some highly innovative fund work in the past year. In a deal that won *International Financial Law Review's* securitisation deal of the year, Maples and Calder advised Sealane on a synthetic securitisation of trade finance loans. This was the first time that any bank had ever securitised such a large portfolio of unusual assets; consequently, the legal structure implemented was also the first of its kind. Despite originating as an unfamiliar asset class, the deal was twice oversubscribed.

First-to-market is a Maples and Calder hallmark in the Caymans. The firm advised Adib Sukuk, a Cayman entity, in the first *sukuk* (Islamic bond) offerings listed on the London Stock Exchange. Western banks are becoming more interested in partnering with Middle Eastern institutions to issue these types of bonds, and more familiarity with the *sukuk* market will lead to more frequent deals of this nature for firms like Maples and Calder.

Leading lawyers

David Brooks
Jon Fowler
Charles Jennings
Graham Lockington
Iain McMurdo
Adrian (Gus) Pope
Julian Reddyhough

Walkers

"Walkers is very, very responsive and a delight to work with," says one client. A rival partner also compliments the firm's breadth: "Walkers covers the gamut of offshore financial-services law." This Cayman firm also has offices in five other jurisdictions, including a new office in Dubai.

Walkers has been at the forefront of the recent increase of Islamic financing vehicles. The firm has advised on a variety of high-profile *sukuk* bond deals. Recent listings of Cayman-issued *sukuk* on both the London Stock Exchange and Dubai International Financial Exchange should only increase investor demand for these products.

The firm advised on Cayman law for the \$190 million *sukuk* certificates issued on the Dubai exchange by Villamar Sukuk Company, a special-purpose company incorporated in the Cayman Islands. The proceeds will be used to partly finance construction of a luxury residential development in Bahrain.

In October 2007, Walkers also represented Gerda subsidiary GTI Trade Finance on a \$1 billion bond offering on the international markets. The issuance will cover Gerda's short-term indebtedness following its recent acquisition of Chaparral Steel for \$4.2 billion. The bonds were jointly guaranteed by Gerda and four of its Brazilian subsidiaries.

Leading lawyers

Ian Ashman
Julian Black
Mark Lewis
Jonathan Tonge

Ogier

Ogier has a strong presence in the investment funds market, and is particularly strong with start-ups. "In the Cayman Islands, Ogier is definitely getting there," says an Ogier client. Despite its strength in funds, the firm's presence in the corporate, structured-finance and asset-backed finance markets is still growing.

Ogier has been active in the many fund restructurings that have surged since the credit crunch. Peter Cockhill led the Ogier team in the restructuring of four equity funds in order to defer redemptions for 12 months. This came after the Absolute Capital fund

experienced difficulty liquidating its portfolio. The funds represented \$1.3 billion of the assets under management of the client, Absolute Management. This was an innovative restructuring because it defined the way a fund will react against liquidation when faced with an accelerated redemption crisis.

The amount of work emerging from Middle Eastern investors has not bypassed Ogier. In July 2007, the firm counselled Emirates Bank International and NSM Capital Management in the acquisition of AbAcAs Investments, a structured investment vehicle (Siv) domiciled in the Caymans. The transaction made AbAcAs the first Siv to benefit from the sponsorship of a Middle Eastern institution.

Leading lawyers

James Bagnall
Peter Bergstrom
Peter Cockhill

Appleby

“Appleby has always been extremely responsive about our inquiries, and works fast on our requests,” says one of the firm’s corporate clients. Appleby’s peers have commended its work in property, trusts, and litigation. One rival who commends Bruce Putterill says: “He does a lot of fund work, and is generally thought of having been around the block a few times.” Also some question the firm’s range, but Appleby refutes those notions with a number of high-profile corporate deals over the past year.

One notable deal was the \$150 million preference share issue by China Hydroelectric, a Cayman-incorporated company, to a group of private-equity investors led by Merrill Lynch. The proceeds were to be used for the purchase of hydro-electric businesses and assets, in China. Bruce Putterill led the Appleby team appointed by DLA Piper, the US firm acting for the issuers.

The firm, led by Simon Raftopoulos, also advised Standard & Poor’s on Cayman law aspects of a \$1.1 billion securitisation of aircraft operating leases involving 36 commercial aircraft leased to 23 airlines in 16 countries.

Leading lawyers

Stephen James
Bruce Putterill

Other notable firms

The Cayman office of **Conyers Dill & Pearman** continues to grow, with nine new associates in the past year. The firm mostly represents international law firms from the US and Europe, which appoint Conyers to act

on their behalf. Conyers was selected by Baker & McKenzie to represent a number of fund-formation projects for an Asian real-estate investment partnership. The firm also provides advice to fund groups, including open- and closed-ended funds and investment vehicles in corporate or partnership form.

Established in 2002, **Stuarts Walker Hersant** is a relative newcomer to the Cayman legal market, but is steadily growing. In the past five years, the firm has advised international law firms, insurance companies, banks and other institutional clients. The firm has three partners, allowing Stuarts some flexibility to respond to clients’ needs. In June 2007, the firm advised an international investment bank in the largest registered-property transaction in the Cayman Islands last year. The firm also advised a Brazilian multinational corporation on the development of an offshore investment fund platform worth more than \$200 million.