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Modernization 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 Monetary Authority (CIMA). Some of the key amendments to these important laws are summarized 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
Mourant
Solomon Harris

Tier 4

Campbells
Conyers Dill & Pearman
Stuarts Walker Hersant
Turner & Roulstone

Tier 5

Charles Adams Richie & Duckworth
Truman Bodden & Co

"North American funds are going gangbusters," said a Cayman partner. "It's as busy as ever and the headcount is growing."

In the last year the Cayman Islands has strengthened its position as a global hub for funds and structured finance work, with a number of increasingly sophisticated and complex structures continuing to attract a range of investors.

Collateralized debt obligations (CDOs) have been particularly active generally in the Americas over the last couple of years, although some partners noted that activity had eased since early 2007.

The past year has also seen a lot of crossover between hedge funds and private-equity funds as each look for other avenues of investment. For example, hedge funds Cerberus and Fortress have started making private-equity investments, while private-equity funds Blackstone and Carlyle have been involved in establishing Cayman hedge funds.

Maples and Calder

Maples and Calder has had yet another strong year despite partner Gus Pope moving into a more managerial role. The practice has been boosted by partner David Brooks moving back to the Cayman office after acting as the managing partner of Maples and Calder's British Virgin Islands office.

The firm regularly acts for clients such as Credit Suisse and Citibank, and attracts wide praise for its strong investment funds and structured finance work from rivals and clients alike. "Maples and Calder made the Caymans," said a client. "We've done funds since the eighties and have used Maples and Calder almost exclusively. They're by far the best firm in the Caymans."

The firm's capital markets group, headed up by Graham Lockington, also recorded a strong year. Maples and Calder acted on three short-listed deals at the 2007 *IFLR* Americas Awards and led the pack in offshore bond and asset-backed issues.

Among a number of highlights, the firm acted as the Cayman counsel on Washington Mutual's \$2 billion dual-tranche hybrid offering alongside Sullivan & Cromwell and Mayer Brown Rowe & Maw.

Another prominent deal saw the firm providing Cayman law advice on Interpublic Group ELF's \$750 million credit facility alongside Cleary Gottlieb Steen & Hamilton and Davis Polk & Wardwell.

"They have a high level of technical skill and knowledge and are good to deal with," one financial client said.

Maples and Calder was also active in the CDO market, acting as Cayman adviser on the first European publicly rated CDO of a natural catastrophe risk. ABN AMRO and the Bank of New York were on the financial side, while Clifford Chance advised on UK law.

Other highlights included acting as the share trustee and administrator on a \$175 million issuance of subordinated Tier II debt by the First Bank of Nigeria and acting as Cayman counsel to the issuer on the IIRSA Norte toll road, Peru's first public-private partnership.

Leading lawyers

David Brooks
Charles Jennings
Graham Lockington
Adrian (Gus) Pope

Walkers

Walkers has continued to attract praise from clients for its work in hedge funds, finance and private equity. The office lost two partners over the course of the year: Kevin O'Connor joined Arthur Cox in Ireland and Heather Bestwick moved to the firm's Jersey office. However, the firm has the depth to still attract clients across a broad range of areas.

"They have a good mix of technical knowledge and commercial skills to get things done," said a client. "They provide a high level of personal service and take the extra effort to know understand what you're trying to accomplish."

Walkers investment funds group, led by Mark Lewis and Jonathon Tonge, has been very busy over the past year. The firm advised on the establishment of fund products for a large number of clients including Barclays Global Investors, Blackstone, Goldman Sachs, JPMorgan and UBS, among others.

One fund client described Walkers as "excellent", adding: "They're very responsive to queries and deal with them in a timely manner."

The finance group, headed by Wayne Panton, advises on a range of CDO, collateralized fund obligation (CFO) and securitization deals. Highlights included acting as arranger on an AAA-rated CDO for a subsidiary of a hedge fund and acting as the arranger for an aircraft leasing securitization.

Walkers was also heavily involved with private-equity companies over the past year. Led by the "well respected" duo of Ian Ashman and Ian McMurdo, the firm advised on the formation of fund structures for the likes of Bain Capital and Sun Capital Partners.

The firm guided Hellman & Friedman on the portfolio acquisitions of UK fund manager Gartmore and the Catrisk operation of The St Paul Travellers Companies. Other highlights include working with Apax Partners during its acquisition of Flextronics and advising KKR during its acquisition of Tommy Hilfiger.

Leading lawyers

Ian Ashman
Julian Black
Ian McMurdo

Ogier

Headed by the widely praised Peter Cockhill, Ogier continued its steady growth in the Cayman Islands this year and is widely regarded by the market as the clear number-three firm for corporate and financial work.

The firm is seen by peers as the most successful of the recent arrivals to the Caymans and is recognized as having a particular strength in investment funds, especially with relation to start-ups.

Ogier's investment funds group, headed up by James Bergstrom, established hedge, private-equity and real-estate funds for a range of high-profile clients including HSBC, Morgan Stanley and UBS.

Ogier established a number of complex, multi-faceted funds last year including Columbus Hill Overseas, Keywise Capital, One East Capital Management, Zais Scepticus Fund I, UBS Banco Pactal and the Nexo Capital fund.

Another standout deal saw partner Colin MacKay act on a \$103 million (before expens-

es) Alternative Investment Market listing of India Hospitality, a special-purpose acquisition corporation, which involved Indian, Mauritian, American, British and Cayman parties.

Clients were impressed with the scope of Ogier's work. "They're very intelligent, practical and understand our business. They are very responsive and sensitive to business needs," said one funds client.

Rival Cayman Islands practices tended to agree, with one describing Ogier as "a good, competent, professional firm".

James Bagnall heads the firm's banking and finance department and is described by a peer as "a cerebral lawyer who is very good technically".

Ogier acted on a range of CDO, secured loan and credit facility transactions last year. Partner Giorgio Subiotto advised Marathon Asset Management in setting up a special purpose vehicle for a sale and leaseback of two aeroplanes with Air Mauritius.

Leading lawyers

James Bagnall
Peter Bergstrom
Peter Cockhill

Appleby

Led by the well respected Bruce Putterill, Appleby is the product of a merger between Appleby Spurling Hunter (itself the product of a merger between Appleby Spurling and Hunter & Hunter in 2004) and Bailhache Labesse in September 2006.

The market is still unsure of the firm's progress since the merger, with many peers noting Appleby has been less visible in the market than in the past. "One merger is hard enough," commented a competitor, "but a three-way merger is very tough."

Nevertheless, Appleby has hired six new associates in its corporate and commercial department and received good feedback from clients. "They're very responsive and provided can-do answers," said one.

Another client said: "They get the necessary things done in a timely manner."

Among Appleby's deal highlights, the firm acted for Collier Investment Management in the closing of the \$4.5 billion Collier International V fund – the largest secondaries fund ever raised.

Meanwhile, the firm acted for XL Capital in relation to a \$350 million offering of non-cumulative perpetual preferred shares by Stonehealth Re in September 2006. In March 2007 Appleby also advised on the subsequent \$1 billion issue of Series E perpetual non-cumulative preference shares by XL Capital.

The firm also acted on behalf of lead investors in a \$1 billion private placement of equity securities for Cayman entity Ironshore.

Leading lawyers

Bruce Putterill

Mourant

Mourant du Feu & Jeune announced it will merge with Quin & Hampson and rebrand as Mourant effective October 1 2007, and it is too early to judge how the merger will affect its ranking.

The move surprised some in the market but gained an overall positive response. One rival partner noted the move has the potential for good synergies for both firms. "Quin & Hampson has a good niche and has more critical mass than Mourant," he said. "The Caymans give Mourant more credibility overall, while Quin & Hampson can tap into a bigger organ."

Looking at the firms separately, Mourant de Feu had a strong year in funds and international finance work despite the departure of partner Owen Jones. Associate Desmond Tiong joined from Mourant de Feu's Jersey office and worked with managing partner Roisin Carter on a number of significant deals.

Among a number of highlights on the capital markets side, the firm provided advice relating to Guernsey, Jersey and Caymans to the Royal Bank of Scotland during Barchester Healthcare's £572 million issue of commercial mortgage-backed securities. A separate team also acted for Barchester under a strict Chinese wall arrangement.

Mourant de Feu also acted as Cayman counsel to Calyon, which is linked to French bank Crédit Agricole, to establish three special purpose vehicles (SPVs) under a \$5 billion per issuer note repackaging programme and two SPVs under a €3 billion repackaging program.

The firm has also been strong on the funds side over the past year. One transaction saw the firm act for Barclays Pension Fund on a number of investments as a shareholder in Blackstone's open-ended hedge funds. Another notable deal saw Mourant de Feu advise Geni Capital on the establishment of a closed-ended segregated private-equity fund with non-traditional asset classes. The firm was also retained by a leading German investment bank across the Caymans and Guernsey.

Quin & Hampson is seen by the market as more litigation-focused, but has nevertheless worked on some solid deals and is well regarded by its clients.

"The work they produced was outstanding," said one client. "They were very hands-on, uncomplicated, good at finding solutions and very practical."

Partner Neal Lomax also came in for high praise. "I can only say the best about Neal Lomax. There's no local counsel better," the client said. "Despite some inhumane time-

frames he was given, he was always very friendly and met all our expectations."

The firm's standout deal was acting as Cayman advisor to KKR and Permira on the €5.9 billion acquisition of German broadcaster ProSiebenSat1. Partner Neal Lomax worked alongside Freshfields Bruckhaus Deringer and Simpson Thacher Bartlett in the landmark cross-border deal.

Elsewhere, the firm provided Caymans advice to Texas Pacific Group during the purchase of the \$540 million Transfusions Therapies business from Baxter International.

Another highlighted deal included advising the Cayman National Corporation in connection with the sale of an interest in Cayman National Insurance Brokers to Aon Insurance Managers. In addition, Quin & Hampson continues to advise the two largest banks in Panama – Banco General and Banco Continental de Panama – in relation to a merger of their financial groups with a combined value of \$7 billion.

Leading lawyers

Roisin Carter
Neal Lomax

Solomon Harris

Solomon Harris has continued to grow its corporate and commercial department, hiring four lawyers in the past 12 months taking the total number of fee earners to 16.

The firm is led by the "top-notch" Paul Scrivener, who is well regarded by peers across the Caymans. A leading funds practitioner, Scrivener was recently called as an expert witness to matters of Cayman Islands law in relation to the high-profile collapse of a US-managed hedge fund. "I would be very comfortable referring clients to him," said one rival partner.

Investment funds are a major focus of Solomon Harris. The firm has increasingly been involved in the establishment of funds for clients including Societe Generale, Lyxor Asset Management, Banco Itau and Unibanco. Real estate-linked private-equity funds and *shariah*-compliant fund structures have also been an area of growth for the firm.

Solomon Harris is also active on cross-border transactions, with one highlight for the year seeing the firm provide Cayman advice for Itaúsa in its acquisition of part of the Latin American wealth management businesses of the Bank of America and the Bank of Boston.

In another significant transaction, the firm advised PricewaterhouseCoopers on the disposal of its Cayman Islands corporate services business to Wilmington Trust.

Said one rival partner: "They've had a great year, they've really turned the corner and they're doing well."

Leading lawyers

Paul Scrivener

Conyers Dill & Pearman

The Cayman office of Conyers Dill & Pearman has continued to grow, hiring three associates and one counsel since October 2006. The firm shares a lot of its work with its offices in Bermuda and the British Virgin Islands and is primarily focused on funds.

Conyers conducted a range of activities on the funds side in the Caymans this year. One highlight was establishing Cayman Islands mutual funds for DKR Capital in a range of investment programs, including convertible and volatility arbitrage, and long/short equity strategies.

Elsewhere, the firm provided Cayman counsel for the establishment of a number of Optima Fund Management funds, including an umbrella fund which has a number of sub-funds registered with the Channel Islands Monetary Authority.

Conyers also provides ongoing Cayman advice to funds such as Sparx, New Star, Wellington Management Company, Pacific Investment Management Company, Jupiter Asset Management, WMG Advisors and Coupland Cardiff Asset Management.

Other notable firms

Turner & Roulstone was singled out by a number of peers as deserving of a rise in the rankings. Senior associate Manuela Belmontes was noted as one to look out for in the future. "They're gradually building up a practice with a couple of good lawyers," said a partner of a competing firm.