

# Cayman Islands

**Chamber of commerce:**

PO Box 1000  
George Town  
Grand Cayman  
Cayman Islands  
**Tel:** +1 345 949 8090  
**Fax:** +1 345 949 0220

**Professional body:**

Cayman Islands Law Society  
PO Box 309  
Ugland House  
South Church Street  
George Town  
Grand Cayman  
Cayman Islands  
**Tel:** +1 345 949 8066  
**Fax:** +1 345 949 8080

The Caymanian Bar Association  
PO Box 10264 APO  
Grand Cayman  
Cayman Islands  
**Email:** info@caymanbar.org.ky

## Investment funds choose the Cayman Islands

**John Wolf  
Campbells  
Grand Cayman**

The Cayman Islands is regarded as the jurisdiction of choice for offshore institutional/private placement investment funds, with over 7,000 registered investment funds domiciled in the Cayman Islands in 2005. This number is expected to be maintained and rise to over 8,000 in 2006 for many reasons, including a lack of any taxation, the experienced professional sector, the innovative fund structures offered and the efficient regulatory environment allowing short lead times to set up mutual funds.

### Regulation in the Cayman Islands

In summary, provided certain criteria are met, the Cayman Islands requires no regulatory consents on investment policy, the contents of circulation of offering documentation, prime broker or other service provider arrangements making the set-up and registration process extremely efficient.

The current sources of regulation for funds in the Cayman Islands are the Mutual Funds Law (2003 Revision) (the MFL) and the Securities and Investment Business Law (2004 Revision) (the SIBL). The MFL regulates funds and administrators of mutual funds, and the SIBL provides for the regulation of investment advisers.

Investment funds fall broadly in two categories: (i) open-ended funds, issuing redeemable interests which are (subject to a few exceptions) required to register with the Cayman Islands Monetary Authority (the CIMA); and (ii) closed-ended funds, which are free from regulation. A mutual fund is defined as a company, unit trust or partnership that issues shares, trust units or partnership interests that both (i) carry an entitlement to participate in the profits or gains of the fund; and (ii) are redeemable or repurchasable at the option of the investor, the purpose of which is the pooling of investor funds to spread investment risks.

The vast majority of Cayman-domiciled investment funds have a minimum subscription per investor of at least \$50,000. Such funds (i) have to ensure their offering document describes the interests being offered in all material respects, and contains such other information as is necessary to enable a prospective investor to make an informed decision as to whether or not to subscribe for or purchase the interest; and (ii) have to register with the CIMA by completing a simple form, termed an MF1. They also need to have their annual

accounts audited by approved auditors situated in the Cayman Islands. Other than this, they are broadly free from regulation and, notably, there is no requirement to have a Cayman Islands-licensed administrator, custodian or other service provider. The offering can commence as soon as the MF1 has been filed with the CIMA – there is no need to wait for the regulator's approval.

As a result, setting up an investment fund is both straightforward and quick. Investors are largely limited to sophisticated or high-net-worth persons, although retail investment funds are also accommodated provided there is a Cayman Islands administrator appointed or the fund promoters are approved by the CIMA. Corporate, limited partnership and unit trust structures are all available for fund vehicles, as are innovative structures such as segregated portfolio companies, which provide effective segregation (or ring-fencing) of different assets and liabilities.

### European Union Saving Directive and savings income

The overwhelming majority of funds in Cayman will be regarded, internationally, as non-Ucits funds in leading administration centres such as Dublin. This means that no reporting of saving income (in effect interest) should need to be made for European-domiciled individual investors. This is a big attraction compared to other jurisdictions that have not secured such treatment for their funds.

### Investment managers and advisors and the Securities Investment Business Law

Persons acting as investment managers or advisors, or who are otherwise involved in securities investment business in the Cayman Islands, are regulated by the SIBL, which came into full effect on July 29 2003. It is notable that this law only applies if the investment manager or advisor is incorporated, registered or has a place of business in the Cayman Islands. Persons involved in securities investment business (including investment managers or advisors) that are based outside the Cayman Islands are not regulated by this law. As a result, most investment managers and advisors for Cayman Island funds are not subject to the SIBL.

Persons involved in securities investment business in or from within the Cayman Islands have to either fall within the category of excluded persons or excluded activities, or be licensed under the SIBL. Of primary importance is that investment funds themselves, including general partners of limited partnership structures, do not usually have to be licensed in their own right.

Investment managers or advisors that are based in the Cayman Islands which advise high-net-worth persons or sophisticated persons (for example, funds registered with the CIMA) only need to be

registered (rather than licensed). Registration involves submitting form SIBL(AD) annually and paying annual fees. Again, registration is effective from the date the form and fee is filed with the CIMA, so the process can be completed quickly and efficiently.

### Proposed new regulatory framework

While the above described regulatory framework has served the Cayman Islands well for over a decade, a working group was recently set up to carry out a review of the regulatory structure. In particular, the task of the working group was to make recommendations to ensure that the Cayman Islands remains the pre-eminent jurisdiction for domiciling offshore funds and to bring the regulatory framework in line with suggestions made by both the KPMG Report and the International Organisation of Securities Commissions (IOSCO). The key objective was to achieve a balance between maintaining the Cayman Islands' competitive edge and ensuring the regulatory framework meets the standards expected of a sophisticated international financial centre.

As a result, the working group made the following recommendations.

That the MFL be amended to differentiate between public and non-public funds.

That the MFL provide for four categories of mutual funds which would be:

- public funds (or retail funds);
- managed private funds, that is, funds administered by a licensed mutual fund administrator having its principal office in the Cayman Islands;
- recognized funds, that is, funds whose equity interests are listed on a recognized stock exchange or which are regulated in a recognized jurisdiction; and
- professional funds which prescribe a minimum aggregate interest purchasable by a prospective investor.

Under the new regime the vast majority of funds are expected to continue to be professional funds. Although the minimum initial investment in such funds is expected to be increased from \$50,000 to \$100,000, otherwise the treatment of such funds is expected to be substantially similar to their treatment under the current MFL.

The recommendations of the working group are expected to be considered by the Cayman Islands legislature towards the end of the calendar year 2006, and changes to the MFL may ensue thereafter.

## Corporate and commercial

### Recommended firms

#### Tier 1

Maples and Calder  
Walkers

#### Tier 2

Appleby Hunter Bailhache  
Ogier

#### Tier 3

Quin & Hampson  
Solomon Harris

#### Tier 4

Campbells  
Charles Adams Richie & Duckworth  
Conyers Dill and Pearman  
Stuarts Walker Hersant

#### Tier 5

Mourant du Feu & Jeune  
Truman Bodden & Co  
Turner & Roulstone

### Maples and Calder

The consensus among rivals and market observers is that Maples and Calder is an extremely accomplished firm. Indeed, one competitor remarked that "they have uniform quality...are better run than many of their rivals and have more of an international outreach". And the almost unanimous opinion of interviewees is that Adrian (Gus) Pope, head of Maples' investment funds practice, is "an outstanding lawyer". The funds practice at this "very reputable" firm has undergone a recruitment drive recently with 10 associates joining, bringing the number of partners and associates to 54.

The fiduciary side is a continuing growth area for the firm, and the investment funds division supplies a comprehensive range of organizational and management services to traditional open- and closed-ended investment funds and hedge funds, including the establishment of traditional market-neutral hedge funds and the establishment of funds with other sector specific objectives such as derivatives and futures. Closed-ended funds such as private equity, venture capital and mezzanine and distressed debt are also a big part of Maples' work, along with traditional mutual funds, emerging markets funds, property funds and pension funds.

To add additional support to the business, the firm owns Maples Finance, which provides clients with a multi-jurisdictional legal and specialized management service from offices in Jersey, the British Virgin Islands and Dublin as well as the Cayman Islands. Maples Finance also provides management and administration services for Cayman Islands' investment funds and Cayman Islands' structured finance vehicles.

On the pure transactional side, Maples also boasts an exceptional capital markets practice, headed by leading lawyer Graham Lockington. The department's 10 partners and 22 associates specialize in providing advice on structured finance transactions, derivatives and mainstream capital markets work.

In addition, Maples Finance provides directives to structured finance vehicles which undertake a wide range of transactions

including, loans and loan programmes, collateralized debt obligations (CDOs), cashflow CDOs, securitizations and structured investment vehicles.

#### Leading lawyers

Henry Hartford  
Graham Lockington  
Adrian (Gus) Pope  
Henry Smith

#### Key contact partners

Henry Hartford  
Graham Lockington

#### Walkers

Overall market perception suggests that Walkers is an outstanding firm for corporate and commercial work in the Cayman Islands.

The asset finance group regularly acts for major financial institutions, export credit agencies, arrangers, operating lease companies, manufacturers, airlines and shipping companies. The focus of the firm's work tends to be on setting up and advising on both on- and off-balance sheet Cayman Islands companies, limited partnerships or trusts. On the transactional side, meanwhile, Walkers is a regular adviser on the sale, purchase and financing of aircraft, ships, rolling stock, transport fleets and telecommunications systems.

Walkers also has a superb investment funds and private equity practice. Notable recent fund deals include providing legal services to UBS and Goldman Sachs Hedge Fund Strategies in connection with the establishment of Cayman Islands Monetary Authority (CIMA)-registered hedge funds. "Well-regarded" leading lawyer Mark Lewis, described by one rival lawyer as being "a very good rainmaker who handles funds excellently," and new partner Phillip Millward, took charge of the deals.

Among the year's other highlights, leading lawyer Ashley Gunning advised Lighthouse Partners, the Florida investment management company, on the migration of its stable of seven hedge funds from the British Virgin Islands to the Cayman Islands. Meanwhile, Jonathan Tonge, described by a competitor as "a very solid partner at Walkers...extremely well respected in funds" and Tim Ludford-Thomas acted for Deutsche Bank in connection with the establishment of CIMA-registered hedge funds.

Iain McMurdo, a "well-regarded" partner in the Investment Funds Group, has acted on a number of high-profile private equity deals recently. These include advising Ripplewood Holdings in a successful spin-off of its Japan investments into a new holding company called RHJ International, which was listed on Euronext and valued at \$10 billion. Other standout private equity deals saw McMurdo representing TowerBrook Capital Partners, a transatlantic private equity firm with \$1 billion of assets under management, which recently spun out of Soros Asset Management, and acting for Hellman and Friedman in connection with a number of portfolio acquisitions, including the aborted \$1 billion acquisition of Universal Underwriters Group from Zurich Financial Services.

#### Leading lawyers

Ian Ashman  
Heather Bestwick  
Mark Lewis  
Iain McMurdo  
Kevin O' Connor  
Jonathan Tonge

#### Key contact partners

Ian Ashman  
Jonathan Tonge

#### Appleby Hunter Bailhache

Appleby Spurling Hunter and Bailhache Labesse have undergone a recent merger, and it is too early to determine the new firm's position in the Cayman Islands rankings. As such, this editorial is based on Appleby's work pre-merger.

The corporate and commercial practice at Appleby is headed by "much respected senior partner" Bruce Putterill. "He's a very creative, global-thinking attorney who is solution-oriented," said a client. In total, the department has four partners and 11 associates. Name partner Bryan Hunter is also admired by clients for his international perspective: "These guys [Putterill and Hunter] are on a par with senior partners at any European or US firm."

The firm has continued its recruitment drive this year, and seven new associates have joined the team including Jeremy Channon, Andre Ebanks, Anne Foster, Simon Raftopoulos, Charlotte Beals-Hart, Caroline McCann and John Gosling, who joined the firm from Appleby's Bermuda practice. Associate Michelle Connell has left the practice in Cayman to join the office in Bermuda.

The firm offers a high level of expertise in most matters of corporate and commercial work including banking, capital markets and mergers and acquisitions. A client commented: "We have found them to be extremely competent."

Among the year's bank lending deals, Appleby advised Prisma Energy International (PE11) on a series of transactions resulting in the recapitalization and restructuring of the group's Brazilian debt. This included a financing facility valued at \$130 million with Unibanco and Banco Itau, the purchase of a group debt note from Citibank for \$216 million, the conversion of \$450 million in inter-company loans to equity, the repayment of an \$82 million inter company loan and a R\$ 750 million non-convertible debenture offering.

Equity capital markets deals included advising XL Capital on a \$3.2 billion ordinary share and equity security offering. The transaction was a recapitalization of a major reinsurer following losses from Hurricane Katrina in 2005. Another prominent deal saw One Media Group, a Chinese language media group focused on the Chinese language lifestyle market in Hong Kong and China, launch a \$64 million initial public offering on the main board of the Hong Kong stock exchange. The firm also advised Huali Holdings, a Chinese manufacturer of quality paper packaging containers and materials, in relation to its \$34 million listing on the Hong Kong stock exchange, and acted for Elektro Electricidade e Servicos, one of the biggest energy distributors in Brazil, in a public offering of 75,000 unsecured non-convertible debentures valued at \$750,000.

On the M&A front this year, the firm advised the Treetops Acquisition Group and Treetops Acquisition Group II on the purchase of a 26% stake (with an option to purchase a further 25% interest) in the Israeli Discount Bank from the Israeli government and another party for \$580 million.

#### Leading lawyers

Bryan Hunter  
Bruce Putterill

#### Key contact partner

Bruce Putterill

#### Ogier

The Cayman office of Ogier has appointed two new partners this year – Giorgio Subiotta and Colin MacKay – along with six associates, each coming from leading UK, antipodean and Canadian law firms bringing the total number of lawyers at the firm to 30.

The firm has a number of “very capable” individuals that are almost universally recognised by peers for the quality of their work. Among these, managing partner James Bagnall, James Bergstrom and Peter Cockhill are names most frequently mentioned by peers and clients.

Investment funds advice forms a core part of the work at Ogier’s Cayman operation, and during the year Cockhill, Glenn Kennedy and Raman Navakadacham have acted on a large number of high-profile transactions, including the \$1 billion investment by Banco Bilbao Vizcayo Argentaria, Spain’s largest financial institution, in the formation of the Proxima Alfa Group, a joint venture formed to acquire the VegaPlus hedge funds platform from VegaAsset Management, Europe’s largest hedge fund manager. Bergstrom, Kennedy and Oliver Godwin acted for Absolute Capital Management Holdings, a Cayman Islands hedge fund manager, on its successful flotation on the Alternative Investments Market (AIM) of the London Stock Exchange. This flotation of a Cayman Islands domiciled investment manager was the first of its kind to date on the island.

The firm also boasts a strong client list of leading investment management and administrations companies, as well as a number of large full-service financial institutions. These include Aladdin Capital Management, Canadian Imperial Bank of Commerce, Fortis Fund Services, HSBC Alternative Investments, Morgan Stanley, Old Mutual Asset Managers and Rockhampton Management.

The firm has a strong banking, finance and insurance practice too, which has advised on major restructurings and mergers of international banks, asset and project financings, structured debt and equity offerings and derivatives matters. On the structured finance side, the firm’s fiduciary services team handles an equally wide range of work, including commercial paper conduits, medium-term note programmes, multi-issuer programmes and special purpose vehicles.

#### Leading lawyers

James Bagnall  
James Bergstrom  
Peter Cockhill

#### Key contact partner

Peter Cockhill

#### Quin & Hampson

“Well-regarded and very capable” partner Neil Lomax heads up Quin & Hampson’s corporate department, which consists of three partners and four associates after the arrival of Matthew Taber from Lovells in London and the departure of Sophie Raven. Lomax comes in for much praise from the market, one rival lawyer stating that he “has not been on Cayman for very long but has kept things running extremely well.”

On the deal front in the last year, the firm took part in a number of noteworthy transactions, all overseen by Lomax. In a highly significant deal, the firm acted for the Cayman National Corporation in connection with its admission to trading on the Cayman Islands Stock Exchange (CSX), the first domestic issuer with its shares admitted to trade on the CSX. The firm also acted as Cayman counsel to the Sentient Group in connection with the establishment of its new private equity fund, Sentient Global Resources Fund II. Another standout deal for Quin & Hampson was its role acting for the Cayman National Corporation again, this time in relation to the sale of its controlling interest in Cayman General Insurance to a subsidiary of the Sagico Financial Corporation.

The firm’s corporate department also has a significant hedge funds practice, and has recently advised Dreman Value Management, an investment manager with over \$13 billion in assets under management, in relation to the establishment of its offshore high opportunity hedge fund.

The firm also acts as Cayman counsel to numerous other leading sponsors, investment managers and fund administrators. Other recent clients that have benefited from Quin & Hampson’s guidance include the Dundee Bank, Melamed & Associates, Clarion Management and Mintz Levin.

#### Leading lawyer

Neil Lomax

#### Key contact partner

Neil Lomax

#### Solomon Harris

Solomon Harris’ corporate and commercial department is headed by Paul Scrivener and founding partner Sophie Harris, who oversee a team of two partners and six associates. The firm’s client base includes major financial institutions, public and private companies, high-net-worth individuals, major onshore law firms, accountants and other advisory firms.

Solomon Harris’ investment funds practice continues to be the major driver of the firm’s growth and success, and it possesses particular proficiency in the structuring of investment funds. The core element of the firm remains entrepreneurial start-up hedge fund managers, but due to steady growth the firm continues to be active with a raft of long-term clients including Société Générale and Lyxor Asset Management. Private equity is another area where the firm is active, and over the past 12 months the firm has advised on numerous redomiciliations of funds from Bermuda and the Bahamas to the Cayman Islands.

Solomon Harris has continued to grow its mergers and acquisitions practice too, acting on the Cayman aspects of multi-jurisdictional acquisitions or disposals as well as Cayman domestic acquisitions and disposals. The firm frequently acts in both domestic and international banking and lending transactions, representing both lenders and borrowers and dealing with complex security issues, and has experience in acting on collateralized bond obligations (CBOs) and collateralized debt obligations (CDOs), note programmes, securitizations and other structured finance matters. In this regard, Solomon Harris is fortunate to house specialist capital markets lawyer Remo Dalimonthee.

Market observers point to the presence of Scrivener as a main reason for the continuing success of the firm: one rival describing him as “reliable” and another as “a safe pair of hands”.

#### Leading lawyer

Paul Scrivener

#### Key contact partners

Sophia Harris  
Paul Scrivener

#### Stuarts Walker Hersant

The corporate and commercial department at Stuarts Walker Hersant is headed by Chris Humphries, and this year has seen the addition of Jane Wareham, who joined from Ansbacher Bank and Trust Company. The move brought the total number of corporate and commercial practitioners to seven.

Solidifying its place in the *IFLR1000* rankings following its debut last year, Stuarts Walker Hersant has remained busy. On the deal front this year, the firm advised on the restructuring of a Cayman Islands master feeder fund structure following the appointment of SEC receivers, and acted as a listing agent to

Capital Invest Offshore Funds, a Cayman Islands multi-portfolio segregated portfolio company listed on the Cayman Islands stock exchange. Stuarts also won a role operating as general counsel to various private equity groups advising on partnership and trust structures and on the creation of acquisition vehicles in the Cayman Islands. Elsewhere, the firm gave advice to a Hong Kong-listed Cayman Islands company, to several leading US healthcare groups and to a leading listed US Internet search company. Clients include Fairfield Greenwich Advisors, the British Caymanian Insurance Company, Koch Industries and New Enterprise Association.

Stuarts' banking practice is headed by name partner and ex-Walkers lawyer Andrew Hersant, described by rivals as being "a very pleasant guy" and by one rival lawyer as being "thought of very highly at Walkers in terms of structured finance". The practice has had another busy year. Among the highlights, Hersant and Humphries acted for a European banking group in connection with the raising of Tier I capital and related structures worth in excess of \$400 million, and acted as counsel to the Cayman Islands borrower in connection with a loan from the International Finance Corporation loan in relation to the financing of the acquisition of a power project company in the People's Republic of China. Also, Hersant and Humphries teamed up again to advise on a \$50 million revolving credit facility for a major European bank through a Cayman unit trust structure. Recent banking clients of the firm include Bank Austria Creditanstalt, Caledonian Bank and Trust and Bancolumbia.

#### **Leading lawyer**

Andrew Hersant

#### **Key contact partners**

Andrew Hersant

Chris Humphries

### **Mourant du Feu & Jeune**

Mourant du Feu & Jeune's Cayman practice operates from offices in both the Cayman Islands and London, specializing exclusively in funds, capital markets, corporate and banking, asset and project finance work. Partners Owen Jones and Roisin Cater head the office in Cayman.

Highlight work over the past year in the capital markets field include acting for Calyon on French private equity group Eurazeo's €3 billion acquisition of Europcar from Volkswagen, advising the Royal Bank of Scotland and RBS Greenwich on Arran Funding's issue of \$5 billion credit card-backed notes under its \$7.5 billion programme, and representing British Land in connection with the £753 million refinancing of its securitized superstore portfolio.

#### **Key contact partners**

Roisin Cater

Owen Jones

### **Truman Bodden & Co**

Despite being smaller than many of its rivals, Truman Bodden enjoys a good reputation in the market, and in Sean Scott possesses "a really excellent lawyer". Scott heads up the firm's investment funds practice, and runs a team that specializes in advising on hedge and mutual funds, offshore investment vehicles and capital markets transactions.

In two landmark deals over the past year, the firm acted as counsel in relation to the first hedge fund to be admitted to the Portuguese Private Exchange and the first Cayman hedge fund

pioneering the use of the first equity participation/debt issue fund using a Cayman special purpose company. The firm has also been engaged as counsel to large Latin American and US hedge funds from their creation and start up through to full capitalization, and has acted for various investment and hedge funds on major leveraged refinancings.

Other noteworthy transactions for the firm include advising large US banks on mutual fund portfolios, and establishing offshore hedge funds for major investment houses and names in the investment and finance industry.

Clients include Zurich Capital Markets, Dresdner Bank, Tremont Funds, Troika Dialog and Decision Capital Management.

#### **Leading lawyer**

Sean Scott