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# THE DISPUTE RESOLUTION REVIEW

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SECOND EDITION

EDITOR  
RICHARD CLARK

LAW BUSINESS RESEARCH

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# THE DISPUTE RESOLUTION REVIEW

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Second Edition

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RICHARD CLARK

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## Chapter 9

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# CAYMAN ISLANDS

*Tony Heaver-Wren\**

### I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

Litigation remains the principal method for resolving disputes in the Cayman Islands. This is partly because of the accommodating approach shown by the Cayman Islands courts to parties that require confidentiality or flexible timetables (two factors that usually attract parties to arbitration).

As the general awareness and appreciation of alternative dispute resolution ('ADR') mechanisms continues to grow, however, there has been a significant rise in local arbitrations, principally for insurance and construction disputes. The Arbitration Law was revised and updated in 2001 and there are proposals to reform it substantially. There has also been an increasing use of mediation in the Cayman Islands.

The procedural rules of court are subject to an overriding objective to deal with every matter in a just, expeditious and economical way. The Grand Court of the Cayman Islands ('the Grand Court') has the power to give directions to achieve this objective, including directions that facilitate ADR, and has shown an increasing willingness to use this power.

The legal system of the Cayman Islands is based upon English Common Law, complemented by locally enacted statutes, Orders-in-Council, and domestic case law.

#### *i Legislature*

The Cayman Islands is a British overseas territory and as such the United Kingdom retains the right to extend certain provisions of UK Parliamentary Acts to the Islands by way of an express provision in the Act itself or by Order in Council. While the UK has power to legislate over certain affairs of the Cayman Islands, local principal statutes are approved by the Legislative Assembly of the Cayman Islands and assented to by the

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\* Tony Heaver-Wren is an associate at Appleby.

Governor, the representative of the Sovereign. A Cayman Islands constitution came into force on 6 November 2009 reflecting and further defining the increased scope of local legislative authority and introducing a Bill of Rights.<sup>1</sup>

*ii The court system*

Significant commercial litigation takes place in the Grand Court. The Grand Court judiciary consists of the Chief Justice and four other full-time judges (supplemented from time to time by acting judges brought in from overseas or drawn from the ranks of senior Cayman Islands practitioners) who exercise the same jurisdiction as that of the English High Court and Divisional Courts. The Grand Court judges have considerable experience of disputes involving complex offshore structures, particularly in the context of hedge fund and commercial trust litigation.

Civil actions brought before the Grand Court in the Cayman Islands are governed by the Grand Court Rules (1995 Revision) ('the Rules'). The Rules lay down procedural requirements which have to be complied with at each stage of litigation. Save for some exceptions, the Rules closely follow the English Rules of the Supreme Court as they stood before the coming into force of the Civil Procedure Rules. There are limited but significant differences between the Rules and the previous English regime.

Appeals from the Grand Court to the Cayman Islands Court of Appeal are governed by rules set out in the Court of Appeal Law<sup>2</sup> and the Court of Appeal Rules.<sup>3</sup> The Cayman Islands Court of Appeal is widely regarded as one of the strongest appellate courts in the Caribbean and the offshore world.

In 2009, the Court of Appeal (Amendment) Rules introduced summary determination, in appropriate cases, of the question whether an appeal is one for which leave is required. Objections to the hearing of appeals for which leave has not been sought and applications for leave to appeal are, in the ordinary course, placed at first instance before a single judge of the Court of Appeal. A party dissatisfied with the upholding of an objection or the application for leave to appeal by a single judge has the unfettered right to renew the objection or application for leave to appeal to the full court.

In certain circumstances an appeal of a decision from the Cayman Islands Court of Appeal can be made to Her Majesty's Judicial Committee of the Privy Council. The process is governed by the Cayman Islands (Appeals to Privy Council) Order 1984, a UK statutory instrument that came into operation on 1 September 1984. The procedures governing appeals to the Privy Council are in the process of a review, although the changes are anticipated to be largely technical and procedural.

Decisions of the Grand Court, the Court of Appeal and the Privy Council on appeals from the Cayman Islands are reported in the jurisdiction's own series of law reports, the *Cayman Islands Law Reports*, cited as CILR, which are published by Law Reports International.

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1 The Bill of Rights will come into force on 6 November 2012.

2 2006 Revision.

3 2004 Revision.

Since 2006, a right of petition to the European Court of Human Rights following the exhaustion of traditional domestic legal remedies has existed. In 2009, the first case from Cayman using this procedure was heard and ruled admissible by the European Court of Human Rights.

## II THE YEAR IN REVIEW

An outline of recent notable court decisions in the Cayman Islands (and on appeal to the Privy Council from Cayman appellate cases) is set out below.

### *i Phoenix Meridian Equity Limited v. Lyxor Asset Management SA*<sup>4</sup>

In this case, an important issue of Cayman Islands civil procedure arose in relation to a cross-jurisdictional matter. The question was whether the Cayman court should restrain US-resident potential witnesses in a Cayman action from giving US court-ordered depositions in the US, where Cayman was clearly the only appropriate forum for the action's ultimate trial. At first instance, Lyxor was refused an application for an anti-suit injunction restraining Phoenix from continuing its proceedings in the US, in which US residents affiliated with SG Americas Securities LLC would be compelled under Section 1782 of Title 28 of the US Civil Procedure Code to give depositions. On appeal, the Court of Appeal held that the depositions by the US-based witnesses would be allowed on the condition that the transcripts of the New York depositions could not be used in the Cayman proceedings except with the leave of and on the conditions imposed by the Cayman court. In the same matter, Lyxor was subsequently refused an application for discovery by oral examination. It was held that Grand Court Order 24, Rule 16 is an exceptional procedure and that oral discovery was unnecessary and would not save costs.

### *ii In the matter of Strategic Turnaround Master Partnership Limited*<sup>5</sup>

The Privy Council has recently granted leave to appeal the much-publicised case of *Strategic Turnaround*. The Court of Appeal had previously refused leave to appeal to the Privy Council on the basis that the decision appealed from concerned the effect and construction of the confidential explanatory memoranda ('CEM') and articles of association on which the shares were issued. Furthermore, the issue was not of great public or general importance as there was no evidence that the provisions in question were standard among the industry.<sup>6</sup>

To recap on the first-instance ruling:

- a* The Grand Court considered the rights of the investor who was prevented from receiving his full redemption proceeds as a result of the directors' decision to suspend redemptions, in particular his right to present a petition for the winding up of the fund.

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4 Unreported, Court of Appeal, 7 July 2009.

5 [2008] CILR 447

6 Unreported, Court of Appeal, 30 March 2009.

- b* This related specifically to the construction of the company's articles of association and the CEM and the powers of suspension of redemption payments therein, and certain issues of law.
- c* The company's application to strike out the winding up petition was dismissed, and it was held to be liable to make the appropriate payment to the respondent at the redemption date of 31 March 2008.
- d* The respondent was a shareholder before 31 March 2008 and became a creditor, in its capacity as shareholder, after that date. The respondent did not have standing to petition on the 'unable to pay its debts' ground, as he had a future debt which was not presently due and payable. The respondent could however petition on the ground of non-payment of the redemption proceeds, and on the 'just and equitable' ground.

The Court of Appeal allowed the appeal in part. The company had the power to suspend the redemption payment prior to the redemption date as provided by the CEM and the articles of association. The payment of the remainder of the proceeds within 30 days of the redemption date, as described in the CEM, was an undertaking subject to circumstances existing to make that possible, as opposed to a guarantee. As to the other grounds of appeal, the appellate court found that Grand Court had been correct in holding the findings of fact set out above. The case now awaits further appeal to the Privy Council.

Despite the controversial *Strategic Turnaround* matter proceeding to a further appeal, it appears that the impact of the case has been rendered nugatory by the combined 2007 and 2009 changes in Cayman Islands Companies Law.<sup>7</sup> Notwithstanding the lack of a balance sheet test for insolvency in the Cayman Islands and the reliance upon a cashflow test for insolvency,<sup>8</sup> the introduction in March 2009 of the right of contingent and prospective creditors to wind up a company requires the Grand Court to take into account the future debts and future cashflow. The addition of a right of contingent and prospective creditors to petition the Grand Court on an inability-to-pay-debt basis as opposed to solely on the just and equitable grounds will open the way to winding up petitions by redeeming investors whose redemption requests are subject to suspension. It is likely that articles of association of funds will adapt to provide contractual restrictions against such petitions.<sup>9</sup> Such restrictions will be buttressed by the 2009 amendments to the Companies Law which expressly provides that non-petition covenants in contracts will be upheld by the Grand Court.

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7 Companies (Amendment) (No. 2) Law (2009 Revision).

8 The 2007 amending legislation declined to introduce a balance sheet test.

9 For a full discussion of the impact of the recent Companies Law changes upon the law post-*Strategic Turnaround* see Heaver-Wren, T 'Contingent and Prospective Creditors and the Cayman Islands Insolvency Regime', *Corporate Rescue and Insolvency Journal*, April 2010.

iii *HSH Nordbank*<sup>10</sup>

The background to this matter was that a syndicate of banks loaned €350 million to a series of Alberta limited partnerships for the purpose of acquiring shares in the German bank, HSH Nordbank AG. The partnerships fell into default in their loan repayments. The syndicate issued proceedings to wind up the general partners of the partnerships. Following a series of hearings (including an appeal), the general partners were wound up on 12 February 2010. During the course of the litigation, the following important points were determined by the Grand Court. First, the Cayman Companies Winding up Rules ('CWR')<sup>11</sup> are to be regarded as essentially a code and, unless there is express provision to the contrary, ought to be considered independently from the Rules. Of particular note is that the court does not have the power to relax the application of the CWR unless the non-compliance relates to time. For example, if the petition is not served 'together with' (i.e., as a single package) the supporting affidavit material, then the documents will need to be re-served. Second, if a relaxation of the time stipulations in the CWR is sought, there must be sworn evidence explaining the non-compliance. Finally, if a company is cashflow insolvent, then except in exceptional circumstances, it should be wound up. The fact that the company may otherwise be balance sheet solvent is not sufficient, unless such solvency can be converted to cash sufficient to pay the outstanding debt within a short period.

iv *TNT NV v. Logispring GP, LP (a Cayman Islands Exempted Limited Partnership)*<sup>12</sup>

In this case, the Grand Court had to determine whether it had the power to appoint or replace a liquidator of Logispring II, a Cayman Islands Exempted Limited Partnership. This issue turned on whether the Limited Partnership Agreement ('LPA'), as a matter of construction, amounted to an agreement to exclude a limited partner's right to apply to the court under Section 7(5) of the Exempted Limited Partnership Law ('ELPL')<sup>13</sup> for a liquidator other than the general partner to be appointed, and whether the LPA could in any event override the jurisdiction of the Grand Court. The first instance judge refused the application for the appointment of the professional liquidator.

On appeal, the Court of Appeal held that on the true construction of the LPA, the power of the court to replace the liquidator on the application of a partner was not excluded pursuant to Sections 7(5) and 15 of the ELPL. By including an express reference to the power of the court to appoint a liquidator on the application of a creditor, the parties were not to be taken to have intended to exclude the power to appoint a liquidator on the application of a partner; it was, however, open to them to do so explicitly. Furthermore, the court should be hesitant to have recourse to the maxim *expressio unius est exclusio alterius*, and in this case the omission of a reference to a 'partner' was likely the result of inadvertence. There was no reason why the parties would wish the residual power of the court to appoint a liquidator on the application of a partner to be excluded.

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10 Unreported, Grand Court, 12 February 2010.

11 Companies Winding Up Rules (2008).

12 Civil Appeal No. 5 of 2009.

13 2007 Revision.

v *Unilever Plc and six others v. ABC International and Molson Coors Brewing Company and nine others v. ABC International*<sup>14</sup>

The Grand Court dismissed an application for an order setting aside summary judgment obtained by the plaintiffs in both causes. The summary injunctive orders were upheld. ABC International failed to show that it had any prospect of proving its primary argument that Saudi law was the governing law of the relevant agreement. The agreement provided for all disputes to be submitted for arbitration according to the rules of the International Chamber of Commerce, and as a result, the governing law was English law. The agreement had the most real and closest connection to England. Furthermore, the Grand Court affirmed that, as a matter of general principle, an injunction restraining a foreign party from pursuing foreign proceedings should be granted sparingly as it was an interference with the foreign court's jurisdiction. Unilever subsequently applied for leave to appeal out of time on the point of Saudi law and for leave to appeal against the decision on summary judgment on 24 March 2009. Both applications were refused.

vi *In the matter of Matador Investments Ltd*<sup>15</sup>

The Grand Court considered a shareholder's rights of redemption where the hedge fund subsequently decides to suspend redemptions, and where a petition for the winding up is then brought by the redeeming shareholder whose proceeds are unpaid as a result of the suspension. The court held that the unpaid redemption proceeds were due to be paid. On the construction of the fund's articles of association and offering documents, the company did not have the power to suspend the 'right to receive redemption proceeds.' The company only had the power to suspend 'redemptions'. Furthermore, the directors' resolution to suspend redemptions was made after the date for payment of the proceeds, and the Cayman law was confirmed that a fund cannot impose retrospective suspension of redemptions. As there was no suspension in existence at the time the redemption request had been made and the redemption funds were due to be paid, the petitioner had standing to bring the petition as a petitioning creditor on the basis of the debt due.

vii *Trade and Commerce Bank v. Arthur Andersen LLP*<sup>16</sup>

The Grand Court granted the application brought by Arthur Andersen to strike out TCB's action for damages for negligence. It was found that TCB's claim had no real prospect of succeeding as it was the vehicle of the fraud. A fraudster cannot blame another party for its own unlawful conduct when that other party is said only to be negligent. TCB had become a vehicle for fraud but TCB had accepted the illegality of the publication of its false financial statements, and then relief on the basis of that illegality. The principle of *ex turpi causa non oritur actio* meant that as the claim was based on TCB's own illegality, it should be automatically barred. The pleadings could not be amended to counteract this principle. Furthermore, there was no principle in law that *ex turpi causa non oritur actio* could be overridden where the claim was based on the commission of a fraud and where

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14 [2008] CILR 415.

15 Unreported, Grand Court, 27 August 2009.

16 [2008] CILR 486.

the prevention of that fraud was the ‘very thing’ that it had contracted the other party to do. TCB had pleaded those facts in the statement of claim and in ascertaining whether the claim had a reasonable prospect of success in striking out applications, the court had to assume those facts pleaded to be true.

viii *Helmsman Limited & the Hotban Trustee Company Limited v. the Bank of New York Trust Company (Cayman) Limited*<sup>17</sup>

The court considered whether a forum clause in two trust deeds assigned exclusive jurisdiction to the courts of England and if not, whether England was in any event the most appropriate forum. The forum clause made the English Court the ‘forum for the administration’ of the settlements; however, it was open to the plaintiff trustees to change the forum ‘at any time or times.’ The question of whether ‘trust administration’ included contentious breach of trust litigation was academic as the trustees had elected to change the forum for administration to Cayman, and there was no court with exclusive jurisdiction over the dispute. As to which was the most appropriate jurisdiction, the court considered, *inter alia*, the location of witnesses and documents, the residence of the plaintiffs and trustees, the proper law of trusts resulting from the settlements, the forums for administration, issues of contribution and indemnity and enforcement of the judgments, and found neither forum could clearly be said to be the natural one. Public policy considerations, however, mean that in general, breaches of Cayman Islands trusts purportedly committed in Cayman should be adjudicated by Cayman courts.

ix *Renova Resources Private Equity Limited*<sup>18</sup>

The Grand Court considered whether to grant leave for a multiple derivative action, that is, whether a derivative action may be brought by a shareholder in the holding company of the ultimate subsidiary company, in this case an exempted limited partnership, and in which the cause of action against the defendant is vested.

The Grand Court held that multiple derivative actions should be permitted in the appropriate circumstances, and that in these circumstances this was not objectionable. It was held that it is open to a shareholder of a holding company to bring an action on behalf of the subsidiary that has directly suffered the loss; however, the shareholder will not be able to bring a single derivative action for loss merely reflecting what the subsidiary has lost.

x *Tasarruf Meduati Sigorta Fonu v. Merrill Lynch (Cayman) Limited and Others*<sup>19</sup>

The Grand Court considered whether it has the jurisdiction to appoint a receiver by way of equitable execution over a settlor’s power of revocation of a trust, at the behest of a single judgment creditor. At first instance the application to appoint a receiver was refused. On appeal, the decision of the Grand Court was upheld, although the Court of Appeal disagreed with some of the first-instance reasoning. The Court of Appeal observed

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17 Unreported, Grand Court, 14 September 2009.

18 Unreported, Grand Court, 14 April 2009.

19 Unreported, Court of Appeal, 9 September 2009.

that the power of revocation on its proper construction was unfettered and could be exercised without anyone else's consent. Furthermore, the Court of Appeal decided that the jurisdiction to appoint a receiver by way of equitable execution could be advanced incrementally, but that the advancement of the equitable jurisdiction to extend over a power of revocation of a trust should be made by legislation and not by the court.

### **III COURT PROCEDURE**

#### **Overview of court procedure**

Petition hearings and the trials of writ actions are held in open court and are public. Interlocutory (interim) hearings are held in chambers and are private, although chambers judgments are not confidential to the parties unless the Grand Court orders them to be. All forms of originating process (such as petitions and writs) are open to public inspection; documents subsequently filed in the proceedings are not. Parties are prohibited from using documents disclosed under compulsion (of rule or order) in the proceedings for purposes outside of the litigation, until they have been read by the court or referred to in open court. There are a number of specific measures available to preserve the confidentiality of particular proceedings. Parties can apply for a hearing that would usually be public to take place in private, or the court file to be sealed from public inspection (or both), or for the publication of information relating to proceedings to be restricted, or details contained in court judgments to be edited (or both).

The Grand Court is sensitive to the need for the protection of confidentiality of commercial arrangements, and will in appropriate cases make suitable orders to protect parties' commercial interests.

#### **Procedures and time frames**

A writ or other form of originating process (such as an originating summons, notice of motion, or petition) is filed for issue by the Grand Court.

The plaintiff gives notice by serving the originating process on the defendant (or its authorised representative or appointed attorneys). Personal service is usually required, which in the case of a corporate defendant means delivery to its registered office.

The default stages provided by rules are as follows:

- a* Acknowledgment of service and notice of intention to defend: for Cayman companies and residents, this must be filed with the court within 14 days of service of the writ. For other parties, there are different times depending on the parties' place of residence.
- b* Statement of claim: to be served within 14 days after service of notice of intention to defend (if not served with the writ).
- c* Defence (and any counterclaim): to be served within 14 days of the acknowledgment of the statement of claim, whichever is later (but no less than 28 days after service of the writ).
- d* Reply (and any defence to counterclaim): to be served within 14 days after the defence.
- e* Lists of disclosable documents: to be exchanged within 28 days after the reply.

- f* Summons for directions: to be issued within 14 days after exchanges of the lists, to deal with future conduct of action towards trial and any other interim matters.

In large commercial disputes, these periods are usually extended by agreement between the parties or by order of the court, and they can be shortened in cases of exceptional urgency. Non-compliance with deadlines can ultimately result in a plaintiff's claim being struck out or judgment being entered against a defendant (as the case may be), but this normally requires non-compliance with at least two successive court orders.

A party can apply to the Grand Court for summary judgment or strike out before a case proceeds to a full trial. The following summary judgment procedures are available:

- a* A plaintiff can apply any time after the defendant has acknowledged service, on the basis that the defendant has no real or *bona fide* defence.
- b* A defendant can apply any time after serving a defence, on the basis that the plaintiff's claim, or part of the claim, has no prospect of success or prospect of recovering more than nominal damages.

The Grand Court can at any stage be asked to strike out a pleading (and order the action to be stayed, dismissed or judgment to be entered accordingly), on the following grounds:

- a* it discloses no reasonable cause of action or defence (as the case may be);
- b* it is scandalous, frivolous or vexatious;
- c* it may prejudice, embarrass or delay the fair trial of the action;
- d* it is otherwise an abuse of the process of the court; or
- e* there has been a wilfully disobedient breach of a final court order imposing a deadline for filing or serving a required document (such as a pleading, a list of documents or a witness statement).

Most interim remedies (in particular, injunctions to restrain the disposal of assets) can be obtained *ex parte*, or without notice to the defendant, in urgent cases or where the relief sought would be frustrated if notice were given to the defendant. Applications made without notice impose extra burdens on the applicant and its attorneys, in particular an obligation to make full and frank disclosure to the Grand Court.

In exceptionally urgent cases, the Grand Court can hear an application on the same day as or the day after it is filed, although it is rare that the court is persuaded that the matter is urgent enough to bypass the normal listing requirements.

Where an order is obtained without notice, the defendant is entitled to challenge the order at a later hearing. Injunctions can be mandatory or prohibitory.

A plaintiff can apply to court for an order to restrain a defendant from dealing with, disposing of or otherwise dissipating its assets to frustrate any judgment obtained against it. This type of order, a *Mareva* injunction, can relate to assets within the court's jurisdiction, or in some cases worldwide. No proprietary claim to the assets is required, but the injunction only takes effect as a personal prohibition, not as a physical attachment. To obtain such an injunction, it may be necessary to establish a substantive cause of action, which can be determined by the Grand Court. Third parties, such as banks, who are put on notice of an injunction, must not assist the defendant in removing assets from their control.

In exceptional circumstances, a search-and-seizure order or *Anton Piller* order is available. This requires a person, on pain of penalties for contempt of court, to allow the applicant access to premises and to effect the physical seizure of assets that need to be preserved as the subject matter of the action, and that may otherwise be concealed or destroyed.

Urgent applications may, in exceptional circumstances, be heard on the day of filing. Plaintiffs will be required to give an undertaking, to pay any damages that may be caused to the other parties for which they may be held liable, in virtually all cases where interim relief is granted. Plaintiffs can also be required to provide security to support their undertaking.

Other interim remedies include:

- a* orders for interim payments (whether in relation to debts, damages or accounts to be taken);
- b* other forms of interim injunctions, both mandatory and prohibitory; and
- c* discovery orders, including against third parties (discovery orders are particularly important in asset tracing cases, and the Grand Court regularly considers applications for disclosure of banking documentation to assist international asset tracing disputes).

The principal remedies are damages (for breach of contract or tortious duty), which are compensatory rather than punitive, specific performance of contractual obligations, injunctions (prohibitory or mandatory) and declarations (as to rights or as to a particular state of affairs).

Appeals can be made to the Court of Appeal. A further appeal can be made, in certain circumstances, to the Judicial Committee of the Privy Council, which sits in England. Grounds of appeal are usually based on error of law, mistaken conclusion of facts, improper exercise of discretion or procedural impropriety.

Appeals must be filed within 14 days. Leave of the court is sometimes required to pursue an appeal from some decisions, including consent orders, orders for costs, and most interim orders. Some orders cannot be appealed at all, including an order dismissing a summary judgment application or where legislation provides that the court's decision is final. Once the notice and grounds of appeal have been filed, the Registrar of the Court of Appeal lays down a timetable for the exchange of written arguments and other materials to be lodged with the court, and fixes a hearing date in consultation with the parties' counsel.

In general, the successful party can expect to recover from the losing party its reasonable costs incurred in conducting the proceedings in an economical, expeditious and proper manner, unless the Grand Court orders otherwise.

Detailed guidelines govern the recoverability of certain fees and disbursements and the taxation process (by which the successful party's costs are assessed). The costs are then made the subject of an award, which is enforceable as a money judgment against the unsuccessful party. This process can result in a significant proportion of a party's actual costs – as much as 25 per cent or even 40 per cent in some cases – being irrecoverable, usually because the allowable rates fall short of realistic commercial fees, or because specific items are deemed excessive or because it would otherwise be unreasonable for them to be paid by the losing party.

Where a plaintiff rejects an offer to settle and then succeeds at trial, but is awarded less than a settlement offer made by the defendant, it may be ordered to pay the defendant's costs from the date of the offer.

Interest is payable from the date of service of a costs award, according to prescribed rates which are amended from time to time. The present rate of interest, effective from 1 December 2008, is 5 per cent.

Limitation periods for commencing proceedings run from the date of accrual of the cause of action, and different claims are subject to different general limitation periods, although in each case there are exceptions:

- a* contract claims must be brought within six years of the breach of contract;
- b* tort claims must be brought within six years of the accrual of the cause of action; in the tort of negligence (the most common tort), this period is six years from the suffering of damages as a result of the conduct in question;
- c* claims for recovery of land must be brought within 12 years;
- d* claims for breach of trust and for equitable relief have no statutory limitation period, although delaying claims unfairly can result in the court refusing to allow a claim to succeed; and
- e* there are special rules extending the limitation period in certain circumstances where the part did not know immediately that it had suffered damage, or the alleged wrongdoing was deliberately concealed from the proposed claimant (plaintiff).

### **Class actions**

The Rules do not provide for group litigation in the Cayman Islands. In practice, however, the Grand Court will allow a representative action to be heard where there are a number of like cases. Company winding up is the only truly collective action provided for in the Cayman Islands.

### **Representation in proceedings**

In order to appear as an advocate or instructing solicitor in the Grand Court, visiting counsel must obtain a temporary work permit to allow them to appear in Cayman court proceedings and be granted a limited admission to the Bar of the Cayman Islands for the purpose of the specific case.

### **Service out of jurisdiction**

In order to obtain leave to serve an originating process filed at the Grand Court outside of Cayman, the plaintiff will need to demonstrate to the Grand Court that the action falls within one of the prescribed categories of case set out in the Rules. Order 11 provides that the Grand Court will have a discretion to appear in Cayman Islands where one of the prescribed forms of nexus with the Cayman Islands in Order 11 of the Rules is satisfied.

### **Enforcement of foreign judgments**

A foreign judgment creates a debt between the parties to that action, which is enforceable in the Cayman Islands under the common law principles of the law of obligations. In order to enforce a judgment under common law, a foreign claimant will accordingly be

required to bring a new action in the Cayman Islands in which the cause of action is a debt claim based on the foreign judgment and non-payment thereof. The debt claimed for is a simple contract debt and subject to the usual limitation period. By this process, the Cayman court will not need to re-examine the merits of the underlying case, obviating the delay and expense for the claimant of having to re-try the claim. Instead, the Cayman court will look to see if there is a valid judgment that has not been paid and at factors governing the granting of the judgment. Of course, it is always open to the claimant to sue on the original cause of action should he wish to do so.

Notwithstanding that the foreign court may have determined that it had jurisdiction over the defendant, the Cayman court will need to be satisfied that the foreign court had such jurisdiction according to Cayman Islands principles of law; a foreign court will be recognised as having had personal jurisdiction over the defendant in the following cases:

- a* if the defendant was ordinarily resident in the foreign country at the time of commencing the foreign proceedings. Residence for a corporation in this context is determined by the place in which it carries on business;
- b* if the defendant voluntarily participated in the proceedings before the foreign court, other than simply to contest jurisdiction;
- c* if the defendant appeared as a party in the proceedings before the foreign court, whether as a plaintiff or counterclaimant; or
- d* if the defendant expressly agreed to submit to the jurisdiction of the foreign court (as opposed to the laws of the foreign country), by contract or subsequent conduct.

It should be noted that the nationality of the defendant is not regarded as a sufficient base for jurisdiction, nor is mere transient presence in the foreign country, nor the fact that the defendant has property within the foreign country.

A Cayman court will only recognise or enforce a foreign judgment that is final and conclusive, rather than interim or interlocutory in nature. A judgment will be regarded as final and conclusive even if it is under appeal in the foreign court, though if execution has been stayed, the Cayman court will usually also stay enforcement of the judgment which it grants in the Cayman Islands. It is also a well-accepted principle that a court should not recognise or enforce a foreign judgment where doing so would be contrary to public policy.

### **Assistance to foreign courts**

#### *i Letters of request*

The UK Evidence (Proceedings in Other Jurisdictions) Act 1975 extends to the Cayman Islands by virtue of the Evidence (Proceedings in Other Jurisdictions) (Cayman Islands) Order 1978. Where an application is made to the Grand Court for an order for evidence to be obtained in the Cayman Islands, the Grand Court has the powers conferred on it by the Act as long as it is satisfied that (1) the application is made in pursuance of a request issued by or on behalf of a court or tribunal exercising jurisdiction in a country or territory outside the Cayman Islands; and (2) the evidence to which the application relates is to be

obtained for the purposes of civil proceedings that either have been instituted before the requesting court or whose institution before that court is contemplated.

This provision is almost identical to the provisions of the 1975 Act and it follows that for the Grand Court to give effect to letters of request:

- a* there must be a formal application to the court;
- b* the application must be made pursuant to a formal request;
- c* the request must be made by or on behalf of a court or tribunal exercising jurisdiction in the relevant country or territory;
- d* the request, and consequent application, must be for evidence to be obtained;
- e* that evidence must be for proceedings that have been instituted before the requesting court or whose institution is contemplated; and
- f* those proceedings must be ‘civil proceedings’.

In the interests of comity the general approach of the Grand Court is to give effect to letters of request where it is proper, practicable and permitted under Cayman law. The Grand Court will generally be accommodating, for example by salvaging the remainder of a problematic letter of request; however, it will not always be entirely deferential to foreign courts.

*ii Information orders*

In *Miller v. Condoco Grand Cayman Resort Ltd*<sup>20</sup> the Cayman courts considered an application for a *Norwich Pharmacal* order. The Grand Court granted the order, confirming that the relief is available in aid of an applicant’s assertion of his or her legal rights whether in Cayman or abroad, in this case, California. The court furthermore ruled that *Norwich Pharmacal* orders can be granted even where the Evidence (Proceedings in Other Jurisdictions) (Cayman Islands) Order 1978 provides an alternative means of obtaining information.

The Cayman courts also have the jurisdiction to issue Bankers Trust orders. These order disclosure of information by a bank where there is *prima facie* evidence of fraud by its customer. Bankers Trust orders raise issues of the protection of confidential information. As a result, an application for directions regarding the disclosure under the Confidential Relationships (Preservation) Law (‘CRPL’)<sup>21</sup> should follow the issuance of the order.

*iii Voluntary gathering of evidence*

Provided evidence is obtained from a person who is willing to give it and who is legally entitled to do so, there are no restrictions on the taking of evidence within the jurisdiction of the Cayman Islands. However, where the information sought and the capacity in which the witness has the information is covered by the CRPL, the witness will only be able to divulge the information after obtaining permission from the court. The CRPL is designed to prevent professionals and their staff disclosing information concerning their clients’ assets, and it makes it a criminal offence for anyone in possession of ‘confidential information’ to

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20 1980-83 CILR 403.

21 2009 Revision.

divulge, attempt to divulge, to offer or to threaten to divulge that information, and even to wilfully obtain or attempt to obtain it, subject to narrow exceptions.

### **Access to court files**

The public can gain access only to originating processes and final orders. The register of writs and other originating processes provides access to any writ, originating summons, originating motion or petition issued by the court, and the register of judgments provides access to every final order made or treated as having been made in open court.<sup>22</sup> Access can be gained to these registers by the payment of a prescribed fee. The registers were created on 1 June 1995 and any person wishing to obtain a copy of an originating process or final order issued prior to that date must make a written application by letter addressed to the clerk of the court. Third parties may apply to inspect other court files; however, the court would require exceptional reasons and circumstances to grant access to such documents.

### **Litigation funding**

Litigation is usually funded by the parties themselves. It is possible for third parties to fund litigation, subject to compliance with the rules against maintenance and champerty. Maintenance is the giving of assistance to a party in litigation by a person who has no interest or motive recognised by law as justifying his interference. Champerty is maintenance of an action in return for a promise of a share of the proceeds of the action. Whether a third party has a legitimate commercial interest in funding the litigation, for example, a shareholder of the party, depends on a number of factors, including whether the maintainer accepts liability for the opposing party's fees and the degree to which the maintainer influences the proceedings.

Insurance may be available, but there is no established market for litigation insurance among local providers.

## **IV LEGAL PRACTICE**

### *i Conflicts of interest and confidentiality*

Regulation of the legal profession in the Cayman Islands currently falls within the remit of the Chief Justice on the basis of an amalgamation of the relevant rules of conduct of the English Bar and solicitors' profession, with those attorneys qualified overseas remaining of course bound by their home jurisdiction's rules as to conduct. The Legal Practitioners Law 2007 modernised the regulation and discipline of the legal profession and made provision for specific local professional conduct rules in the Cayman Islands.

Conflicts of interests and the duty of confidentiality are governed by the English Common Law rule in *Prince Jefri Bolkiah v. KPMG*.<sup>23</sup> The case concerned an accounting firm which had in its possession confidential information of a former client as a result

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22 This does not include court files of the Family Division.

23 [1998] All ER (D) 767.

of providing to it litigation support services and whether and in what circumstances the firm could undertake work for another client with an adverse interest. It was held that the court could intervene by imposing an injunction if (1) the solicitor was in the possession of information which was confidential to the former client; and (2) such information was or might be relevant to the matter on which the solicitor was instructed by the second client. Therefore, there is no conflict of interest where the client is a former client; the only duty which remains after termination of the retainer is the duty of confidentiality of information imparted during its subsistence.

The duty to preserve confidentiality is unqualified. It is a duty not to communicate the information to a third party and not to misuse the confidential information for the benefit of others and without the consent of the client. Although the client is not completely protected from accidental disclosure of the confidential information, he is entitled to prevent the former solicitor from exposing him to any avoidable risk. Lord Millett in the *Prince Jefri* case said, ‘it is of overriding importance for the proper administration of justice that a client should be able to have complete confidence that what he tells his lawyer will remain secret.’ Accordingly, the court should intervene unless it is satisfied there is no risk of disclosure. This risk must be real and not merely fanciful, however it need not be substantial. A solicitor should not accept instructions if it will increase the risk that information which is confidential to a former client may be disclosed to a party with an adverse interest without the consent of that former client.

Once the former client has established the two-part test, the burden shifts to the firm in possession of the confidential information, to show there is no risk that the information will come into the possession of those acting for the party with the adverse interest. Chinese walls and other measures can be taken to eliminate the risk of disclosure, and there must be clear and convincing evidence that all reasonable measures have been taken to prevent disclosure.

The Royal Court of Jersey has since taken a more practical approach to conflicts of interest and the duty of confidentiality than onshore because of the limited number of attorneys capable of dealing with the complex international litigation that often arise offshore and this is likely to prove particularly relevant authority in the similar circumstances prevailing in the Cayman Islands.<sup>24</sup>

## *ii Money Laundering*

The Proceeds of Crime Law 2008 (‘POCL’)<sup>25</sup> came into force on 30 September 2008 in response to recommendations made by the Caribbean Financial Action Task Force. The Law aims to harmonise anti-money-laundering (‘AML’) and anti-terrorist-financing legislation in the Cayman Islands and update the AML regime in line with changes to international AML standards since Cayman’s AML regime was last substantially

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24 *RBC Trustees (CI) Limited and Michael David de Figueiredo v. John Bisson and Eleven Others (exercising the profession of advocates and solicitors under the name and style of Appleby)*.

25 See also the Money Laundering Regulations (2009 Revision) and the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands.

overhauled in 2000. POCL replaced the Proceeds of Criminal Conduct Law and some sections of the Misuse of Drugs Law, and is now the primary legislation dealing with AML and terrorist financing in the Cayman Islands, although the Misuse of Drugs Law (2009 Revision) and the Terrorism Law (2009 Revision) are also relevant to AML. In particular, POCL imposes new reporting obligations on regulated financial institutions and gives the courts and the Attorney General broader powers in restraining and recovering the proceeds of criminal conduct on civil grounds.

‘Criminal conduct’ is defined in POCL as conduct that constitutes an offence in the Cayman Islands or that would constitute an offence if committed in Cayman. ‘Criminal property’, including terrorist property, constitutes or represents a person’s benefit or interest arising, in whole or in part and directly or indirectly, from criminal conduct when the offender knows or suspects that the property constitutes or represents such a benefit. POCL applies to property wherever situated and it is immaterial where the criminal conduct took place. Furthermore, it is immaterial who carried out or benefited from the criminal conduct and whether the conduct occurred before or after POCL’s commencement.

The five main offences under POCL are:

- a* concealing, disguising, converting, transferring or removing criminal property from the Cayman Islands;<sup>26</sup>
- b* entering into or becoming concerned in an arrangement that the person knows or suspects facilitates the acquisition, retention, use or control of criminal property;<sup>27</sup>
- c* acquiring, using or having possession of criminal property;<sup>28</sup>
- d* an employee or money-laundering reporting officer (‘MLRO’) failing to disclose to the MLRO or Financial Reporting Authority (‘FRA’) respectively, a knowledge or suspicion of another person’s money laundering;<sup>29</sup> and
- e* ‘Tipping off’ – making a disclosure to a third party that is likely to prejudice any investigation arising from a money-laundering disclosure to the FRA.<sup>30</sup>

The main defence to the first three offences is the making of a suspicious activity report to the FRA. In relation to the first four offences, professional legal advisers do not commit an offence if the information is received in privileged circumstances. Also in relation to offence four, a similar statutory privilege defence applies to accountants, auditors and tax advisers. Reporting suspicious activity to the FRA will not give rise to any civil liability and does not constitute a breach of the duty of confidentiality under Cayman law.

The penalty for the offences following summary conviction is a fine of up to CI\$5,000 and/or imprisonment for up to two years. Following conviction on indictment, offences (*a*) to (*c*) attract a penalty of imprisonment for up to 14 years and offences (*d*) and (*e*) attract a penalty of imprisonment for up to five years and/or a fine.

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26 Section 133 of the POCL

27 Section 134 of the POCL.

28 Section 135 of the POCL.

29 Sections 136-137 of the POCL.

30 Section 139 of the POCL.

The Money Laundering Regulations ('the Regulations')<sup>31</sup> supplement POCL and are mandatory. They apply to financial service providers and professional intermediaries, and obligate them to comply with specific administrative requirements in support of AML. The Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands support the Regulations and are also mandatory by virtue of regulation 5(4)(a). The four key requirements relate to client identification and verification procedures, record keeping procedures, internal reporting procedures, and internal control procedures.

## **V DOCUMENTS AND THE PROTECTION OF PRIVILEGE**

### **Privilege**

A party can withhold certain documents from inspection by the other party on the grounds of privilege, although their existence must still be disclosed in general terms in a party's list of documents. Whether or not a particular document or class of documents is privileged can be contentious, but the following categories of documents are generally privileged:

- a* correspondence between a party and its lawyers, whether or not connected with the litigation, which is confidential and written for the purpose of giving or obtaining legal advice (this includes correspondence with in-house lawyers, unless it relates to administrative matters and not legal advice);
- b* correspondence between a party's lawyers and third persons, where that correspondence is connected with the litigation (other than open correspondence with the other party's lawyers);
- c* a party's lawyers' file notes, drafts, instructions and briefs to counsel and counsel's opinions and notes; and
- d* experts' reports and witness statements prepared in connection with the litigation (unless and until disclosed to the other party).

The following documents are not privileged:

- a* notes relating to the litigation prepared by a party for internal purposes (including board minutes recording discussions of the litigation), unless for the purposes of reporting, when strictly necessary, to others in the party's organisation on advice received from lawyers, or seeking information requested by lawyers;
- b* notes to the published accounts concerning the litigation and any provision for the proceedings in the accounts, and related correspondence with accountants; and
- c* written communications between a party and outsiders (such as the party's parent company or subsidiary, the police and other authorities, insurers and professional advisers other than the party's own lawyers), or written notes recording these communications, unless these documents came into existence for the dominant purpose of obtaining legal advice in connection with existing or contemplated proceedings.

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31 2009 Revision.

A document is not privileged just because it is considered (or marked) confidential or because it is produced internally. In particular, current case law in England (likely to be followed in the Cayman Islands) suggests that if litigation is not actually in prospect, documents prepared by employees of a party to be sent to its lawyers may not be privileged if they do not amount to communications between the client and its lawyers for the purpose of taking advice.

The following categories of privilege are recognised by Cayman Islands law.

*i Legal advice privilege*

Traditionally legal advice privilege has been held to attach to confidential communications between a party and his or her attorney that were written for the purpose of providing legal advice for the client but not otherwise. This includes communications with in-house counsel provided that those communications relate to legal, as opposed to administrative, issues.

The House of Lords in the English case of *Three Rivers District Council and Others v. Governor and Company of the Bank of England (No. 6)*<sup>32</sup> held that legal advice privilege extends to communications written for the purpose of providing advice as to prudent practical steps to take in the relevant legal context. It remains to be seen how the Cayman courts will interpret legal advice privilege in light of this decision.

*ii Litigation privilege*

Unlike legal advice privilege, litigation privilege only attaches to documents created at a time when litigation is contemplated or pending. Documents covered by litigation privilege fall into two categories:

- a* communications between a party's attorney and a third party are covered by litigation privilege if they are created at a time when litigation is contemplated and are connected with the litigation; and
- b* communications between the party and a third party are covered by litigation privilege if they are created for the dominant purpose of submission to a legal adviser in view of contemplated proceedings.

*iii Privilege against self-incrimination*

A party is entitled to claim privilege over documents that tend to expose it to a criminal penalty.

*iv Public interest immunity*

This operates to prevent disclosure of documents production of which would be so injurious to the public interest that it ought to be withheld, even at the cost of justice in the litigation in question.<sup>33</sup>

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32 [2004] UKHL 48.

33 *Burmab Oil Co Ltd v. Governor and Company of the Bank of England* [1980] AC 1090.

*v Without prejudice privilege*

This attaches to communications between the parties or their legal advisers that are made in a good faith effort to settle proceedings.<sup>34</sup>

### **Other rules regarding confidential information**

CRPL creates a statutory regime regulating the disclosure of confidential information held by professionals in the course of conducting professional business in the Cayman Islands. ‘Confidential information’ is information relating to property which the recipient is not, otherwise than in the normal course of business, authorised by the principal to divulge. Such information may not be divulged unless the situation falls within certain exceptions which are listed in Section 3(2) of the CRPL, or if the principal has applied for, and the court has given, directions that the information be divulged under Section 4(1) of CRPL. Anyone divulging information in contravention of CRPL is guilty of an offence and liable to a fine or imprisonment. CRPL is likely to be replaced in the near future by data protection legislation.

## **VI PRODUCTION OF DOCUMENTS**

In actions commenced by writ, Order 24 of the Rules provides for discovery to take place automatically 14 days after close of pleadings, unless the court makes a different order.

There are also other provisions under which a litigant can seek disclosure of documents, for example:

- In exceptional circumstances, a prospective plaintiff may be able to obtain an order for discovery of documents against a prospective defendant before the commencement of proceedings if the documents sought are necessary to enable the case to be properly formulated.
- It may be possible to obtain an order for discovery of documents by a third party who has become involved, albeit innocently, in the defendant’s (or prospective defendant’s) wrongdoing. Such an order is referred to as a *Norwich Pharmacal* order, following the English case of *Norwich Pharmacal Co v. Customs and Excise Commissioners*.<sup>35</sup> This jurisdiction is typically used by victims of fraud to obtain discovery against banks who have received misappropriated funds. However, it should be noted that if the documents sought to be discovered contain ‘confidential information’ within the meaning of CRPL, then even if the order is granted, the party subject to the order will not be allowed to disclose the documents unless he has made a separate application to the Court for directions under Section 4(1) of the Law and the court has directed that the information be provided.
- A party to litigation can apply under Order 24 Rule 10 of the Rules for disclosure of any document to which the other party has referred in a pleading or affidavit.

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34 *Brown v. Rice* [2007] EWHC 625 (Ch).

35 [1973] 2 All ER 943.

- A party to litigation may apply under Section 8 of the Evidence Law<sup>36</sup> for an order that he be at liberty to inspect and take copies of any matter in a banker's book. The application will have to be supported by affidavit evidence stating why the inspection is necessary and how the entries in question will be admissible at the trial of the proceedings in question. Again, if the order is granted, the banker subject to the order will have to make a separate application for directions under Section 4(1) of CRPL.

Discovery under Order 24 takes place in two stages. First each party has to produce a list of discoverable documents, then he has to provide each other party with the opportunity to inspect and take copies of those documents (excepting those that are covered by privilege).

'Discoverable' documents are those which are in a party's 'possession, custody or power' relating to matters in question in the proceedings.<sup>37</sup>

A 'document' includes anything in which information is recorded, including computer and other electronic records, photographs, text messages, voicemail and other audio recordings, and includes documents held both in the Cayman Islands and overseas.

As to 'possession, custody or power', 'custody' means mere physical holding and 'possession' is more than mere physical holding – for example, a bailee or agent has possession of documents entrusted to him by their owner. Documents in a person's 'power' include documents which that person has a right to call for and would include documents held by that person's servant or agent. The question of whether documents held by a third-party adviser or a subsidiary company are in a party's 'control' will be a question of fact to be determined by reference to the circumstances of the particular situation.

The test of relevance is a broad one. It has been held that documents relate to the matters in issue if it is not unreasonable to suppose that they contain information that may directly or indirectly enable a party either to advance his or her own case or to damage that of his or her adversary.<sup>38</sup>

In general, the court will not allow applications for discovery where they are held to be mere 'fishing expeditions'. The party making such an application will have to show that there is a real possibility of evidential materiality.<sup>39</sup>

## VII ALTERNATIVES TO LITIGATION

The principal alternative to litigation is arbitration, since arbitration awards can be readily enforced in local and foreign courts under international conventions and bilateral treaties for the reciprocal enforcement of arbitral awards. However, increasing numbers of disputes are now being settled by mediation, in cases where the traditional adversarial

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36 2007 Revision.

37 Grand Court Rules Order 24, Rule 1.

38 *Compagnie Financière v. Peruvian Guano Co* (1882) 11 QBD 55.

39 *Grupo Torras v. Butterfield Bank* 2000 CILR 452.

approach may not allow for a resolution that is satisfactory to the parties. The answers to the following questions exclude arbitration.

Alternative dispute resolution ('ADR') is essentially a matter of mutual agreement between the parties. There are no procedural rules requiring it, and the courts have no powers to force parties to attempt ADR before resorting to or continuing with litigation. However, the Grand Court's duty to actively manage legal proceedings does include helping the parties to settle the whole or part of the proceedings, and the court encourages parties to use ADR in appropriate cases.

Whether ADR is confidential is a matter for the parties to decide. Mediation is usually not only confidential but also without prejudice to the parties' publicly stated position, in the event the mediation is unsuccessful.

The question of how evidence is given in ADR and whether documents or admissions made or produced in or for the purposes of the ADR later be protected from disclosure by privilege depends on what form of ADR process is used and what the parties agree on. The aim of most ADR processes is to avoid the formalities and adversarial elements in litigation, which may be counterproductive to resolving a dispute, such as giving or exchanging evidence.

If the parties commit to a binding process such as binding neutral evaluation or adjudication, documents produced and admissions made in that process are not likely to be privileged. On the other hand, if the parties attempt resolution through a non-binding process like early neutral evaluation or mediation, documents and admissions are usually privileged.

The treatment of costs in ADR is a matter for the parties to decide. Very often, costs are a significant point of issue between the parties and the allocation or reimbursement of costs forms part of any settlement. However, once the parties manage to resolve their principal points of dispute in an ADR process, they frequently agree to make no provision for costs and leave them to lie as they have been incurred.

ADR is used particularly in insurance and construction disputes, although it can assist in resolving almost any kind of dispute (except where judicial determination of a legal question is required).

There are no dedicated organisations that offer ADR services in the Cayman Islands; however, a number of local firms include practitioners who have ADR qualifications and are members of recognised institutions, such as the Chartered Institute of Arbitrators, the Centre for Effective Dispute Resolution (CEDR) or ADR Chambers.

The Law Society is currently preparing draft legislation for recommendation to the government, which would radically reform and update the Arbitration Law<sup>40</sup> to bring it in line with modern international models, such as the UNCITRAL Model Law on International Commercial Arbitration 1985. Currently, the Arbitration Law governs domestic arbitration proceedings and the enforcement of domestic arbitration awards, while the Foreign Arbitral Awards Enforcement Law<sup>41</sup> governs the recognition of foreign arbitration proceedings and the enforcement of foreign arbitral awards.

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40 2001 Revision.

41 1997 Revision.

## VIII OUTLOOK AND CONCLUSIONS

The new Financial Services Division ('the FSD') was opened as a division of the Grand Court on 1 November 2009 in response to a steadily increasing amount of complex and high-profile commercial litigation in the Cayman Islands. The FSD deals with financial services cases, and aims to allow the Court to enhance its case management capabilities thereby promoting greater efficiency. Each case begun or transferred to the FSD is assigned a judge with specialist financial services expertise who manages the case from its start to finish.

As of 4 December 2009, the fee required for issuing a writ, petition, originating summons or originating notice of motion in the FSD is \$5,000 (fees in the FSD being denominated in US dollars<sup>42</sup>). Financial proceedings that may be transferred or begun in the FSD include proceedings relating to:

- mutual funds;
- an exempted insurer;
- claims for \$1 million or more arising from breach of a contract of insurance;
- certain financial services regulatory laws;
- certain applications under the Trust Law, and claims for breaches of trust or fiduciary duty, where the trust is worth \$1 million or more;
- the winding up of companies and other applications pursuant to the Companies Law;
- any application for the dissolution of a mutual fund formed as a partnership;
- certain breach of contract or breach of duty by or against a professional service provider;
- applications for evidence pursuant to a letter of request issued by a foreign court;
- applications concerning local and international bankruptcies; and
- enforcement of a foreign judgment or arbitral award.

A case can also be transferred to the FSD even if it does not fall within the above as long as the court is satisfied it is an appropriate case to be heard there.

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42 This fee includes the hearing fee for three days of court time, which in the Civil Division of the Grand Court would cost approximately \$2,700 in total, in addition to the issue fee in that division of approximately \$1,200.

## **TONY HEAVER-WREN**

### *Appleby*

Tony Heaver-Wren is an associate in the litigation and insolvency practice group and practises in the insolvency and restructuring team at Appleby in the Cayman Islands. He works primarily in the areas of fund disputes, solvent and insolvent liquidations and restructurings, shareholder and director disputes and insolvency litigation.

Mr Heaver-Wren has over 13 years' experience in advising major lenders, liquidators, administrators, receivers and boards of private and publicly listed companies on all aspects of contentious insolvency and corporate restructuring. Mr Heaver-Wren was called to the Western Australian Bar in February 1994, was admitted as a solicitor in England and Wales in 2006 (now non-practising) and in February 2008 was admitted as an attorney in the Cayman Islands. He has published extensively and was a committee member of the Association of Business Recovery Professionals in England and of the Insolvency Professionals' Network in Australia.

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