The Dispute Resolution Review

Third Edition

Editor
Richard Clark

Law Business Research

The Dispute Resolution Review

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Third Edition

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CAYMAN ISLANDS

Katie Brown[*]

I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

The Cayman Islands is a British Overseas Territory, and Cayman law is in general based on English common law and certain English statutes which have been applied to the Islands, and local legislation enacted by the Legislative Assembly ('the LA'). The United Kingdom retains the right to extend provisions of UK legislation to the Cayman Islands by way of an express provision in the Act itself or by Order in Council.

A new 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.[1]

Significant litigation takes place in the Grand Court ('the Court'). Most significant commercial disputes are commenced in the Financial Services Division, which was established in 2009.

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 the English High Court. The Grand Court judges, especially in the Financial Services Division, have considerable experience of disputes involving complex offshore transactions and structures, particularly in the context of hedge fund and commercial trust litigation.

Appeals from the Grand Court to the Cayman Islands Court of Appeal are governed by rules set out in the Court of Appeal Law[2] and the Court of Appeal Rules.[3]

* Katie Brown is an associate at Appleby.

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

2 2006 Revision.

3 2004 Revision, amended in 2009.

The Cayman Islands Court of Appeal is widely regarded as one of the strongest appellate courts in the Caribbean and the offshore world.

In certain circumstances, an appeal from a decision of 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.

Decisions of the Grand Court, the Court of Appeal and the Privy Council on appeals from the Cayman Islands are reported in the Cayman Islands Law Reports, cited as CILR, which are published by Law Reports International.

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.

Litigation remains the principal method for resolving disputes, partly because of the accommodating approach shown by the Grand Court to parties requiring confidentiality or flexible timetables (factors which usually attract parties to arbitration). However, awareness and use of alternative dispute resolution ('ADR') mechanisms is growing.

In June 2010, the Law Reform Commission ('the LRC') produced for public consultation an Arbitration Bill, which seeks to modernise the conduct of domestic and international arbitration in the Cayman Islands by streamlining the current legislative regime and introducing provisions which are consistent with existing legislative models in other jurisdictions – with particular reference to the UNCITRAL Model Law. The LRC is now considering comments received during the consultation period and a final version of the Bill is expected to be laid before the LA for enactment in early 2011.

II THE YEAR IN REVIEW

i *In the matter of Belmont Asset Based Lending Limited*[4]

This case concerned a fund that had ceased to be viable as a result of the credit crunch and the Petters fraud, as a result of which investments were written off or substantially written down. The fund's management commenced an informal wind down process. One of the investors became dissatisfied with the way the process was being conducted and petitioned to wind up the fund on the 'just and equitable' ground.

Originally allegations were made against management but these were dropped when the fund did not oppose the Petition, and winding up was sought on the basis of 'loss of substratum'.

The judge held that it was just and equitable to make a winding-up order in respect of an open-ended corporate mutual fund if the circumstances were such that it had become impractical, if not actually impossible, to carry on its investment business in accordance with the reasonable expectations of its participating shareholders, based upon representations contained in its offering document. If such a company, organised

4 Unreported, judgment of Mr Justice Jones dated 21 January 2010.

as an open ended mutual fund, has ceased to be viable for whatever reason, the Court will draw an inference that it is just and equitable for a winding up order to be made. This was clearly applicable in this case, and the winding up order was made.

ii *In the Matter of Camulos Partners Offshore Limited*[5]

This was another hedge fund dispute. The investor sought to redeem its shares with a notice dated 31 July 2008. The redemption date was 30 September 2008. On 3 September 2008, the fund made a restructuring proposal to all its shareholders. The investor did not accept that proposal and instead sought to enforce its right to redeem its shares. The fund suspended redemptions on 12 November 2008.

In April 2009, the investor started proceedings against the fund by originating summons seeking declarations. The investor subsequently also brought a petition for the winding up of the fund on the 'just and equitable' ground. The petition also sought orders for alternative relief under Section 95(3) of the Companies Law (2009 Revision). This gives the Court hearing a just and equitable winding-up petition jurisdiction to grant, as an alternative to winding-up, orders for alternative relief that are broadly similar to those which the English court can make on a petition for unfair prejudice.

The fund applied to strike out the petition. The application failed and the fund appealed.

The first instance judge had considered that Section 95(3) had broadened the scope of the just and equitable ground to include considerations of unfairness as under Section 459 of the English Companies Act 1985.

The Court of Appeal rejected that interpretation and confirmed the gateway to the making of alternative orders under Section 95(3) was that it is just and equitable that the company be wound up. This does not mean it is impossible for allegations of unfair treatment, such as those set out in the petition, to provide grounds for winding up. However, Section 95(3) does not provide a free-standing remedy.

The Court of Appeal also confirmed that the Court, when faced with an application to strike out a winding-up petition as an abuse of process, should apply a two-stage test: Is an alternative remedy available? Is the petitioner acting unreasonably in failing to pursue that alternative remedy? If the answer to both these questions is 'yes', it will not be just and equitable to wind up the company.

In this case there was an alternative remedy, something the investor had recognised by starting its first set of proceedings. The investor's objective in pursuing the petition was to put pressure on the fund to accede to its demands as ventilated in the existing proceedings. The investor's conduct was not reasonable, its pursuit of the petition was an abuse of process and the petition was struck out. The Court also ordered the investor to pay the fund's costs on an indemnity basis.

5 Unreported, judgment of Court of Appeal dated 18 March 2010.

iii *In the Matter of Bernard L Madoff Investment Securities LLC*[6]

This was an application by Irving H Picard, who had been appointed trustee of Bernard L Madoff Investment Securities LLC ('BLMIS') by the New York bankruptcy court, for a declaration under Section 241(1)(a) of the Companies Law (2009 Revision) that he was entitled to be recognised as the only person entitled to act on behalf of BLMIS in the Cayman Islands.

The judge explained that Section 241(1)(a) had not changed the pre-existing conflict of laws rules on this subject, but provided foreign representatives with a convenient and expeditious method of establishing their credentials and right to act on behalf of a debtor in a way that will have universal effect within the jurisdiction, without needing to establish his right separately against every individual counterparty.

All matters concerning the constitution of a company are governed by its place of incorporation, therefore the law of the place of incorporation determines who is entitled to act on its behalf. The authority of a bankruptcy trustee or liquidator appointed under the law of the place of a company's incorporation is recognised in the Cayman Islands. The declaration was given.

iv *In the Matter of Reserve International Liquidity Fund*[7]

This was another application by foreign representatives, this time official liquidators appointed by the British Virgin Islands court, for recognition under Section 241(1)(a) of the Companies Law (2009 Revision). The judge broadly repeated the guidance that he had given in *In the Matter of Bernard L. Madoff Investment Securities LLC*, and stated that he would only refuse to give a declaration under this section if it could be demonstrated that the law of the place of incorporation pursuant to which the foreign representative had been appointed was inherently inconsistent with Cayman Islands law in some material respect such that recognition of the foreign representative's authority would be contrary to public policy.

v *Masri v Consolidated Contractors International Company*[8]

Mr Masri had obtained judgment in England against CCIC, and the English court had appointed a receiver by way of equitable execution over certain of CCIC's collectables. Mr Masri had obtained an order of the Grand Court recognising the receiver. CCIC applied for that order to be set aside.

The order was set aside as it was not an order which was capable of being enforced in Cayman. There is a fundamental distinction between the concepts of recognition and enforcement. While the Court must recognise every foreign judgment which it enforces, it need not enforce every foreign judgment which it recognises. A judgment can only be enforced if it creates a final and conclusive obligation in respect of which the Court can render a money judgment or an order for specific performance. What Mr Masri should have done was to commence enforcement proceedings in relation to the money

6 Unreported, judgment of Mr Justice Jones dated 5 February 2010.

7 Unreported, judgment of Mr Justice Jones dated 16 April 2010.

8 Unreported, judgment of Mr Justice Jones dated 19 February 2010.

judgments he had obtained against CCIC. Once the Court had given judgment in the enforcement proceedings it could have appointed its own receiver by way of equitable execution of its own judgment.

vi *In the matter of HSH Cayman I GP Limited and others*[9]

A syndicate of banks had loaned €350 million to a series of four Alberta partnerships for the purpose of acquiring shares in a German bank, HSH Nordbank AG. The partnerships fell into default and the syndicate issued proceedings to wind up the general partners. Shortly before the hearing of the winding-up petitions, the limited partnerships commenced proceedings in Delaware seeking protection under Chapter 11 of the US Bankruptcy Code. The companies argued that the Cayman proceedings should be stayed to allow the Chapter 11 proceedings to unfold. The judge declined to stay the proceedings and made the winding-up orders.

His judgment confirmed that if a company is cash flow insolvent, then, except in certain circumstances, it should be wound up. The fact that it may be balance sheet solvent is not sufficient, unless that solvency can be converted to cash sufficient to pay the outstanding debt within a short period.

The companies appealed on the basis that the judge had been wrong not to stay the proceedings. They argued that comity required the judge to exercise his powers in a way which was helpful to the Delaware court. The Court of Appeal was not convinced that the failure to adjourn was likely to make the task of the Delaware court more difficult, and upheld the winding-up orders.

vii *Ahmad Hamad Algosaibi and Brothers Company v. Saad Investments Company Limited, Maan Al-Sanea and others*

These proceedings arise from allegations of fraud made by the influential Saudi Arabian Algosaibi family against Mr Maan Al-Sanea and a number of corporate defendants, largely domiciled in Cayman, controlled by him. Allegations were also made against Mr Al-Sanea in claims and complaints to the authorities in a number of other jurisdictions, including New York, London, Saudi Arabia, Bahrain and Switzerland. The Grand Court granted a worldwide *Mareva* (asset-freezing) injunction against Mr Al-Sanea and the other defendants in July 2009, freezing US$9.2 billion of assets and appointing receivers over many of the Cayman corporate defendants. The English High Court also made a worldwide freezing order in support of the Cayman proceedings.

There have been a series of Grand Court decisions, including an important decision confirming that the '*Chabra* jurisdiction', whereby a *Mareva* injunction may be granted against a non-cause-of-action defendant, is part of the law of the Cayman Islands.[10] *Chabra* injunctions are most commonly used where the plaintiff does not have a cause of action against the respondent but the plaintiff argues that the respondent is the

9 Unreported, judgment of Mr Justice Jones dated 12 February 2010, upheld by judgment of the Court of Appeal dated 24 May 2010.

10 Unreported, judgment of Mr Justice Henderson dated 17 November 2009.

legal owner of assets which belong beneficially to another against whom the plaintiff does have a cause of action (although they are not confined to that situation).

The Court of Appeal gave guidance as to when a defendant to a *Mareva* injunction will be held to be in contempt of court for failure to comply with its provisions.[11] Mr Al Sanea was originally held to be in contempt of court for various alleged breaches of the *Mareva* injunction; this judgment and the order made declaring Mr Al Sanea in contempt was set aside by the Cayman Islands Court of Appeal,[12] which in the process of allowing the appeal on substantive grounds also reaffirmed the importance of compliance with the procedural requirements of the Grand Court Rules when making and serving applications for contempt of court.

The Court also considered the circumstances in which it will lift the automatic stay of litigation imposed by Section 97 of the Companies Law when companies enter into liquidation, and the circumstances in which it will be appropriate to continue *Mareva* injunctions against companies in liquidation.[13] In this case the Court held that it was fair in all the circumstances to lift the statutory stay in relation to the corporate defendants that were in liquidation. The Court also continued the *Mareva* injunction against those defendants, as it considered that there was still a risk of dissipation of assets despite the liquidators' appointments, particularly given that they had not yet succeeded in gathering in all the assets of the companies.

The Grand Court also dealt with other insolvency-related issues, such as the constitution and powers of creditors and liquidation committees when one of the creditors is a plaintiff asserting proprietary claims over the estate of the company in liquidation and is therefore potentially in a position of conflict of interest.[14]

The Grand Court also heard a substantial jurisdiction challenge in which Mr Al Sanea argued that the Cayman Islands was not the appropriate forum for the trial of the claims against him or against the Cayman company defendants. The Grand Court decided[15] that the Cayman Islands was the appropriate forum for the trial of the action as a whole, but found that in the case of certain claims alleged against Mr Al Sanea and no other party to the action, Saudi Arabia might well be the appropriate forum for the determination of those claims. The Grand Court therefore imposed a case management stay over the entirety of the proceedings (a novel application of this particular procedural tool) to await the outcome of an investigation which is currently ongoing by authorities in Saudi Arabia or until such time as the plaintiff could show that it could not found jurisdiction against Mr Al Sanea in the courts of Saudi Arabia. The decision by the Chief Justice to impose a case management stay has now been reversed and the case management stay has been lifted by the Court of Appeal[16], although further appeals to the Privy Council are now expected.

11 Unreported, judgment of Mr Justice Anderson (Acting) dated 15 March 2010.

12 Unreported, judgment of the Court of Appeal dated 1 December 2010.

13 Unreported, judgment of Chief Justice Smellie dated 19 April 2010.

14 Unreported, judgment of Chief Justice Smellie dated 2 August 2010.

15 Unreported, judgment of Chief Justice Smellie dated 25 June 2010 (under appeal).

16 Unreported, judgment of the Court of Appeal dated 1 December 2010.

viii *Deloitte & Touche v. Felderhof and others*[17]

This was an application by the second defendant, 12 years after the granting of a *Mareva* injunction, to review the decision to make the injunction.

The second defendant argued, relying on the case of *Bass v. Bass*,[18] that the Court had no power to grant a free-standing *Mareva* injunction in support of foreign proceedings. In *Bass v. Bass* it was held that the Court cannot grant a free-standing *Mareva* injunction in the absence of a cause of action in the Cayman Islands.

The judge referred to his own decision in *Ahmad Hamad Algosaibi and Brothers Company v. Saad Investments Company Limited et al* (outlined *supra*) where he confirmed that the *Chabra* jurisdiction is part of the law of the Cayman Islands.

He then observed that, since the decision of the Court of Appeal in *Telesystem International Wireless Inc v. CVC/Opportunity Equity Partners LP and others*,[19] which applied the decision of the House of Lords in *Channel Tunnel Group Ltd v. Balfour Beatty Construction Ltd*,[20] it had been clear that the Court had jurisdiction to issue *Mareva* injunctions in support of foreign proceedings even though the parties had no intent to litigate the substance of their dispute here. He also noted that the claim advanced in the Cayman Islands must be one which is within the jurisdiction of this Court, even though all are in agreement that it would be more convenient to try the matter elsewhere.

In light of this, the judge rejected the submission that the Court had no power to grant a free-standing *Mareva* injunction, and suggested that *Bass v. Bass* could no longer be regarded as good law.

ix *Culross Global SPC Limited v. Strategic Turnaround Master Partnership Limited*[21]

The Privy Council has provided authoritative guidance about how provisions in a fund's contractual documentation addressing redemptions and suspensions of redemptions should be interpreted, and how to determine which of the various documents constituting the investment agreement between a fund and its investor should take priority if the documents contain inconsistent provisions.

The Privy Council held that a fund did not have the power to suspend the payment of redemption proceeds after a valid redemption notice submitted by the investor had expired, having construed the fund's articles of association and other contractual documentation. As a result, the investor was held to be a creditor of the fund following the expiry of its redemption notice and thus had standing to petition to wind up the fund for non-payment of its redemption proceeds.

The Court of Appeal had held that the fund was entitled to suspend not only the calculation of net asset value and redemptions but also the payment of redemption proceeds. The Court considered that the process of redemption was not complete until

17 Unreported, judgment of Mr Justice Henderson dated 10 February 2010.

18 [2001] CILR 317.

19 [2002] CILR Note 22.

20 [1993] AC 344.

21 Unreported, judgment delivered by Lord Mance on 13 December 2010.

the investor had been paid his redemption proceeds in full; the investor remained a member until that time and so remained bound by the articles which permitted a suspension of payment of those proceeds. In coming to this conclusion, the Court of Appeal relied on 19th century authority concerning disputes between building societies and their members. The Privy Council found that as the matter was a contractual one, none of those cases had any particular relevance to the question.

The Privy Council was fortified in its conclusion by reference to commercial sense. The fund was an investment vehicle to which investors could for a defined period commit funds and which offered investors, for obvious commercial reasons, the relative security of a defined route by reference to which they might recover the value of their investments at a defined date. The fund's analysis was unattractive for investors in the fund and by extension for the fund itself as an institution seeking investors, in subjecting them to different and much greater insecurity.

III COURT PROCEDURE

i Overview of court procedure

Proceedings in the Grand Court are governed by the Grand Court Rules (1995 Revision) ('the Rules'). With some limited 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. The Rules are subject to an overriding objective to deal with every matter in a just, expeditious and economical way. The 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, in particular in cases in the Financial Services Division.

ii Procedures and time frames

Commercial disputes are usually dealt with in the Financial Services Division of the Grand Court ('the FSD') which was established in 2009. Each case in the FSD has an assigned judge who is well-versed in commercial matters and has enhanced case management powers, aimed at the speedy resolution of complex litigation.

Proceedings relating to the winding up of companies are dealt with in the FSD and governed by the Companies Winding Up Rules.

A writ or other form of originating process (such as an originating summons, notice of motion, or petition) is filed and served 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.

If the defendant is not in the Cayman Islands, the Court's permission will be required to effect service out of the jurisdiction.

The default stages provided by rules are as follows:

a Acknowledgment of service and notice of intention to defend: for Cayman defendants, this must be filed within 14 days. For overseas defendants, the order giving permission to serve out will specify the deadline.

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 after the acknowledgment or 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.

If the defendant fails to give notice of intention to defend, or fails to defend, it will be open to the plaintiff to apply for judgment in default. This application is processed administratively by the clerk of the Court.

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; and
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. Where an order is obtained without notice, the defendant is entitled to challenge the order at a later hearing.

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.

A plaintiff can apply to the 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 is 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 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.

An applicant for an interim injunction will almost always 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. Applicants can also be required to provide security to support their undertaking.

Other interim remedies include other mandatory or prohibitory injunctions, orders for interim payments (whether in relation to debts, damages or accounts to be taken) and discovery orders, including against third parties.

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 to the Court 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 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 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 general, the successful party in proceedings 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 fees and disbursements and the taxation process (by which the successful party's costs are assessed). This process can result in a significant proportion of a party's actual costs – as much as 60 per cent or

even 70 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. Costs incurred in relation to work done by foreign lawyers are only recoverable if the lawyer in question has been temporarily admitted as an attorney in the Cayman Islands for the purposes of the proceedings in question, and the work is done after he is admitted.

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 November 2010, is two and three-eighths per cent (for judgments in US or Cayman Island dollars).

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 party did not know immediately that it had suffered damage, or the alleged wrongdoing was deliberately concealed from the proposed plaintiff.

iii Class actions

The Rules do not provide for group litigation. 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.

iv Representation in proceedings

Natural persons may carry on proceedings through an attorney or in person. Companies may not commence or defend proceedings other than by an attorney.

In order to appear as an advocate 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.

v Service out of jurisdiction

The plaintiff will need leave to serve originating process outside Cayman. The Grand Court has discretion to give permission to serve out if the action falls within one of the prescribed categories of case set out in Order 11 of the Rules (which applies to both

individuals and companies). Leave is also required for service out of the jurisdiction of any summons, notice or order.

vi Enforcement of foreign judgments

There is a procedure for registration of foreign judgments, but this has only been extended to judgments from Australia.

A judgment from any other country may be enforced at common law on the basis that it 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 judgment creditor will have 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. It used to be that this process was only available in the case of a judgment for a specified sum of money. However, following the 2008 case of *Bandone v. Sol Properties*,[22] where an order for rectification of a company's shareholder register was enforced, this is no longer the case.

The Court will not need to re-examine the merits of the underlying case, obviating the delay and expense for the plaintiff of having to re-try the claim. Instead, it will look to see if there is a valid judgment that has not been paid and at factors governing the granting of the judgment.

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 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.

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.

The 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 Court will usually also stay enforcement of the judgment which it grants in the Cayman Islands. It is also a well-accepted principle that the Court should

22 [2008] CILR 301

not recognise or enforce a foreign judgment where doing so would be contrary to public policy.

vii Assistance to foreign courts

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.[23] 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 contemplation; 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.

Information orders

Norwich Pharmacal relief (discussed further in Section V, sub-section (ii), *infra*) is available in aid of foreign proceedings, and can be granted even where the Evidence (Proceedings in Other Jurisdictions) (Cayman Islands) Order 1978 provides an alternative means of obtaining information.[24]

Disclosure orders may raise issues of the protection of confidential information (see further Section V, *infra*). As a result, an application for directions regarding the

23 The principles applicable to such applications were considered in *First American Corporation v. Zayed* [2000] CILR 57, In the matter of a request for international judicial assistance from the Sandefjord Court [2001] CILR 322 and *In re Parmalat Securities Litigation* (Unreported, judgment of Mr Justice Henderson dated 23 January 2007).

24 *Miller v. Gianne and Condoco Grand Cayman Resort Ltd* [2006 CILR N26].

disclosure under the Confidential Relationships (Preservation) Law ('the CRPL')[25] may be required following the issuance of the order.

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 CRPL (see further Section V, *infra*), the witness will only be able to divulge the information after obtaining permission from the Court.

Asset freezing orders
Mareva injunctions have to date only been granted where there has been a cause of action justiciable in the Cayman Islands. However, the Court has been willing to continue *Mareva* injunctions following the stay of Cayman proceedings, where the substantive dispute is to be litigated elsewhere, in order to assist the foreign court.[26]

Recognition of foreign bankruptcy officials
The Court may make an order under Section 241 of the Companies Law (2009 Revision) recognising the right of a trustee, liquidator or other official appointed in foreign bankruptcy proceedings to act on behalf of the debtor in the Cayman Islands.[27]

viii Access to court files

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.

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, as are final judgments made or treated as having been made in open court;[28] documents subsequently filed in the proceedings are not. Third parties may apply to inspect other Court files; however, the Court would require exceptional reasons and circumstances to grant access to such documents.

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.

25 2009 Revision.

26 See discussion of *Deloitte & Touche v. Felderhof* at Section II, sub-section (viii), *supra*.

27 See discussion of *In the Matter of Bernard L. Madoff Investment Securities LLC and the Matter of Reserve International Liquidity Fund* at Section II, sub-sections (iii) and (iv), *supra*.

28 This does not include proceedings in the Family Division.

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).

ix 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, as 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

Conflicts of interests and the duty of confidentiality are governed by the common law. The rule is stated in *Prince Jefri Bolkiah v. KPMG*.[29] That case held that the court could impose an injunction to prevent a firm accepting instructions to act adversely to a former client if (1) the firm was in 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 firm 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 his former attorneys 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. An attorney 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.

29 [1998] All ER (D) 767.

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 taken a more practical approach to conflicts of interest and the duty of confidentiality than has been seen in the onshore cases because of the limited number of attorneys capable of dealing with the complex international litigation that arises offshore. This is likely to prove particularly relevant authority in the similar circumstances prevailing in the Cayman Islands.[30]

ii Money Laundering

The Proceeds of Crime Law 2008 ('POCL')[31] 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 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;[32]

30 *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)* [2007 JLR Note 58].

31 See also the Money Laundering Regulations (2010 Revision) and the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands.

32 Section 133.

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;[33]

c acquiring, using or having possession of criminal property;[34]

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;[35] 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.[36]

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, or imprisonment for up to two years, or both. 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 or a fine, or both.

The Money Laundering Regulations ('the Regulations')[37] supplement and POCL 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

i 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:

33 Section 134.

34 Section 135.

35 Sections 136-137.

36 Section 139.

37 2010 Revision.

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.

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.

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)*[38] 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.

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.

Privilege against self-incrimination

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

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.[39]

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.[40]

ii 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:

a 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.

38 [2004] UKHL 48.

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

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

b 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*.[41] This jurisdiction is typically used by victims of fraud to obtain discovery against banks who have received misappropriated funds.

c 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.

d A party to litigation may apply under Section 8 of the Evidence Law[42] 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.

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.[43]

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.[44]

41 [1973] 2 All ER 943.

42 2007 Revision.

43 Grand Court Rules Order 24, Rule 1.

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

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.[45]

iii Other rules regarding confidential information

The Confidential Relationships (Preservation) Law[46] ('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 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.

In practice, this means that, even if the Court has given an order for disclosure of information which is confidential information, the party giving disclosure will commit an offence if he does not, before doing so, obtain a direction from the Court to divulge the information in accordance with Section 4(1) of CRPL.

VI 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. Arbitration is particularly commonly used in construction and insurance disputes.

Currently, the Arbitration Law[47] governs domestic arbitration proceedings and the enforcement of domestic arbitration awards. Cayman is party to the New York Convention, and the Foreign Arbitral Awards Enforcement Law[48] gives effect to the provisions of the New York Convention and governs the recognition of foreign arbitration proceedings and the enforcement of foreign arbitral awards.

There is a Cayman Islands chapter of the North American branch of the Chartered Institute of Arbitrators, which is available to assist parties in the conduct of arbitrations in the Cayman Islands.

The government is in the process of reforming and updating the Arbitration Law to bring it in line with modern international models, such as the UNCITRAL Model Law on International Commercial Arbitration. A draft arbitration bill was published for consultation in June 2010.

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

46 2009 Revision.

47 2001 Revision.

48 1997 Revision.

Increasing numbers of disputes are also now being settled by mediation, in cases where the traditional adversarial approach may not allow for a resolution that is satisfactory to the parties.

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.

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.

VII OUTLOOK & CONCLUSIONS

The Grand Court is still seeing the fallout from the global financial crisis and many of the most significant cases before it this year have been brought by investors or lenders seeking to recoup losses suffered due to the downturn. The Court has shown itself ready to adopt a flexible approach to assist such plaintiffs. The Court has also been willing to provide what assistance it can to insolvency officials appointed by overseas courts.

The new Financial Services Division has, in its first year, been successful in ensuring that complex commercial matters are dealt with in a speedy and efficient manner. This can only be expected to continue. The current trend towards ADR (and in particular arbitration) can also be expected to continue.

Appendix 1

ABOUT THE AUTHORS

KATIE BROWN

Appleby

Katie Brown is an associate in the litigation and insolvency practice group specialising in international commercial litigation with a particular emphasis on corporate litigation including fund disputes, directors' and shareholders' disputes, company winding-up and trust litigation. Katie has experience of fraud and asset recovery and has obtained and defended emergency injunctive relief aimed at the preservation of assets, including freezing injunctions and receiver appointments. Katie is a graduate of Oxford University, where she took a double first in Classics at Corpus Christi College, and won several university prizes. She then graduated from City University, London with a postgraduate diploma in Law and completed the Legal Practice Course at BPP Law School, London. Prior to joining Appleby in 2009, Katie practised at niche fraud litigation firm Peters & Peters in London where she specialised in all aspects of civil fraud and commercial litigation, and worked on several high-profile cases. Before joining Peters & Peters, Katie trained at Freshfields Bruckhaus Deringer and qualified in February 2006.

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