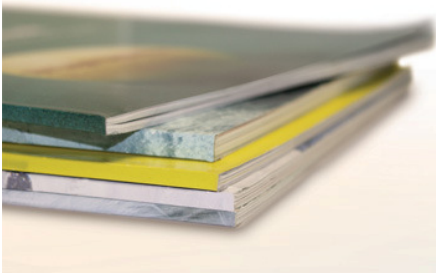


# The Cayman Grand Court's Financial Services Division: A Progress Report

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**In November 2009, the Cayman Islands introduced a specialised court division to handle financial disputes – the Financial Services Division (“FSD”). This article assesses its progress so far.**

The aim of the FSD is to handle more efficiently high-profile, complex and document-heavy commercial disputes arising out of the financial services industry in the Cayman Islands. Proceedings in the FSD are governed by the **Grand Court (Amendment) Rules 2009** (the “Rules”).

Since it commenced operations, there have been 349 cases issued in or transferred to the FSD. In addition, there are another 30 awaiting transfer from the Civil Division. The credit crunch and worldwide recession have significantly increased the extent and scale of such litigation.

The FSD now boasts a suite of modernised

courtrooms, judges’ chambers and party conference rooms with up to date technology mirroring those in onshore jurisdictions. This enables participants to make use of Livenote (or similar software systems) and video conferencing facilities.

The registrar of the FSD, a new post established by the Rules, assigns a specific judge to deal with each case within the FSD’s commercial caseload from start to finish. This has allowed that judge to become more intimately involved with the facts and the issues in dispute, and be much more hands-on in the management and adjudication of disputes.

The Rules also provide wide-ranging responsibilities for the registrar to maintain records and documents within the FSD. The registrar has the power to request attorneys, and any foreign lawyers they instruct, to attend before the assigned judge for a case management conference (CMC) at any time.

The three new judges of the FSD who were appointed shortly before its commencement, are Angus Foster QC, who has been serving in the Grand Court for a number of years; Andrew Jones QC, a long-standing member of the Grand Court Rules Committee; and Sir Peter Cresswell, a retired English Commercial Court judge. Together with the Hon Chief Justice Smellie, Mr Justice Henderson and Mr Justice Quin, there are now six judges available to hear cases assigned or transferred to the FSD, reflecting the volume of complex commercial disputes that now take place in this jurisdiction.

### **Dedicated Judges**

The allocation of a dedicated judge who rapidly becomes intimately familiar with the parties and issues in dispute enables a party in need to seek an expedited litigation timetable, when a normal timetable would render a result worthless. Further, a dedicated judge can force the parties to become more focused on the strengths and weaknesses of their particular case, which in turn can reduce the number of ill-founded applications and costly satellite litigation. This is a welcome step at a time when parties have understandably become more sensitive than ever about the cost of litigation.

The Rules provide that various categories of proceedings are deemed “*financial services proceedings*” and therefore must be issued in the FSD:

- a) mutual funds;
- b) an exempted insurer;

- c) claims for CI\$1 million (€938,000) or more arising from breach of a contract of insurance;
- d) certain financial services regulatory laws;
- e) certain applications under the **Trust Law**, and claims for breaches of trust or fiduciary duty, where the trust is worth CI\$1 million or more;
- f) the winding up of companies and other applications pursuant to the **Companies Law**;
- g) any application for the dissolution of a mutual fund formed as a partnership;
- h) certain breach of contract or breach of duty proceedings by or against a professional service provider;
- i) applications for evidence pursuant to a letter of request issued by a foreign court;
- j) applications concerning local and international bankruptcies; and,
- k) enforcement of a foreign judgment or arbitral award.

Cases in the FSD were also affected by the **Court of Appeal (Special Sittings) Rules 2009** which came into force on 1 January 2010. These Rules allow any party to any civil proceedings (which includes those in the FSD) to apply for a direction that allows a special sitting of the Court of Appeal. Presently, the Court of Appeal only sits in Cayman for three weeks, three times per year. However, a party may now apply in writing to the Court of Appeal for a special sitting outside of these periods. If the court agrees to direct a special sitting, it

attracts a fee of CI\$20,000.

This procedure allows significant commercial matters to incorporate the hearing of interlocutory appeals without disrupting the underlying proceedings in the Grand Court. It has already been invoked by appellants on several occasions.

In September 2010, a practice direction was issued to allow for the registrar to fix a hearing date at the request of an applicant and simply notify the parties of it, rather than fix a hearing date in deference to the availability of the parties or their attorneys. It means that the FSD judges' diaries take precedence over those of the instructed attorneys, which ensures maximum efficiency. This was also a significant step in ensuring that recalcitrant defendants are not able to abuse the usual listing process for the Grand Court to delay the occurrence of hearings.

### **Recalcitrant Defendants**

The practice direction provides that the assigned judge may convene a CMC whenever he sees fit and this can take place by video conference or even by telephone, especially if foreign lawyers and leading counsel have been retained by any of the parties – which is more than likely in complex commercial disputes. The practice direction also helpfully empowers an FSD judge to hear parties' interlocutory applications by video conference or telephone when he is away from the Cayman Islands. An example of this being put into practice was when the Icelandic ash cloud prevented London counsel and witnesses traveling to the Cayman

Islands; court business could nevertheless continue.

The FSD has been a welcome addition to the Grand Court from a litigant's perspective and following its one-year anniversary has shown marked changes to the delivery of justice in the Cayman Islands in complex commercial disputes. The separation of heavy commercial matters for management by a specific judge has proved to be a success and has increased overall efficiency. At the same time, the FSD judges have already produced a considerable body of jurisprudence through the timely delivery of reasoned judgments on significant legal issues.

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