

Constant evolution maintains Cayman Islands fund leadership

Conyers' Gene DaCosta on the jurisdiction's funds offering

As the long-term offshore leader for the formation and domicile of hedge funds, and a hotbed of activity in the private equity market, the Cayman Islands has always been a trailblazer and a beacon for the efficient deployment of global capital. This reputation has endured over decades and remains as solid today, despite the modern challenges of high start-up costs and regulatory fatigue from seemingly ever-increasing and more complex international initiatives.

As established managers explore new methods of attracting capital, including seeding innovative funds and exciting opportunities in fintech and artificial intelligence, institutions are rejuvenating the investment funds space and raising vast sums of private equity capital, often well above initial targets. As the Cayman Islands enhances its fund offering, ahead of competitors both offshore and onshore, it remains the clear domicile of choice.

FIRST MOVER DRIVES PROGRESS

Estimated to account for some 75% of the offshore hedge fund market (source: Cayman Islands Monetary Authority (CIMA) Annual Report 2015/16), the Cayman Islands was the first offshore jurisdiction to regulate such investment vehicles, with the introduction of the Mutual Funds Law in 1996, some years before the term 'hedge fund' had been coined. Successive governments have capitalised on this, and have continued to support and help develop a vibrant funds industry. In fact, today, most of the larger institutional clients insist on their hedge fund or private equity vehicles being located in this reputable (and politically and economically stable) jurisdiction.

A highly-flexible corporate environment, and a cohesive working relationship between the public and private sectors, has seen fund legislation evolve and develop specifically to meet the desires of industry. At the same time, CIMA has maintained a robust regulatory framework, in keeping with ever-changing global standards, while remaining commercially attuned to eliminate any unnecessary impediments to business.

REGULATORY COMPLIANCE AND INDUSTRY INNOVATION

Today, there are over 10,000 regulated hedge funds (source: www.cima.ky), alongside many more that are exempt from CIMA regulation. Private equity funds for instance are typically set up as exempted limited partnerships (ELPs) in Cayman and as at the end of 2017 there

was a total of 22,346 ELPs (source: Cayman Islands Registrar of Companies) registered in the jurisdiction. Further, since 2015 there have been over 3,000 ELPs (Registrar of Companies) registered annually for private equity fundraisings. Behind these statistics, it is evident that the Cayman Islands guides the global fund industry in terms of best practice and innovative fund structuring, with transparency and governance demanded by institutional investors. The Cayman Islands is recognised for its compliance and co-operation on matters of anti-money laundering, tax information and financial regulation, being among the first group to implement the OECD's Common Reporting Standard, along with the US's Foreign Account Tax Compliance Act.

Deep talent, meanwhile, in the legal, accounting, fiduciary and fund administration sectors, honed over decades of industry leadership, allows institutional fund managers to benefit from highly-optimal fund structuring solutions and support that goes a long way to meeting their commercial requirements.

In an era of comparatively lower investment returns, soaring compliance costs, pressure on management fees and a view that beta is not something to pay for anymore, sophisticated global asset managers have remained true to the Cayman Islands for its ability to offer highly-customised fund products, compared with the more commoditised offerings of relatively newer fund jurisdictions. To provide innovative and differentiated products – including special classes of shares for certain investors or different fund terms and fee variations – to managers always seeking an edge in the investment world is testimony to a jurisdiction that, while being an industry leader, has always looked to evolve in a competitive marketplace.

LEGISLATION FOR INDUSTRY PROGRESS

The Cayman Islands has shown it is willing to introduce new products to ensure the needs of the industry are met. An important legal development was the 2016 introduction of the limited liability company (LLC), following strong demand from US fund managers for a corporate vehicle that mirrors the Delaware LLC, providing limited liability along with the benefit of separate legal personality. With over 1,000 LLCs formed since inception (Registrar of Companies), we have seen exceptionally high take up in the private equity sector, and LLCs have been particularly useful in the context of

hedge funds as an offshore feeder fund and a new alternative to the immensely popular Cayman Islands Exempted Company.

Elsewhere, significant strides have been taken to prepare an 'opt in' Alternative Investment Fund Managers Directive (AIFMD)-compliant framework for Cayman funds that wish to operate in the EU under the EU's AIFMD. As legislation in this area continues to be fine-tuned and with full expectation that offshore jurisdictions like Cayman will receive the AIFMD Passport from the European Securities and Markets Association, funds with interests in Europe have continued to avail themselves of the EU's national private placement regimes, which provide the appropriate EU market access where required.

LONGSTANDING SUCCESS – NEW CHALLENGES

A cornerstone of the Cayman Islands' success as an international financial centre has been the economic and political stability derived as a UK Overseas Territory, with a sophisticated legal system, based on UK common law and ultimate recourse to the UK Privy Council. Should the need for litigation arise, the specialist Financial Services Division of the Cayman Islands Grand Court, created in 2009, is served by judges with immense practical experience in financial matters, notably resolving some of the most high-value and complex disputes arising out of the financial crisis.

While the global economic crisis briefly interrupted the solid upward growth in investment fund formation, from the resilience demonstrated by the industry over this time, the Cayman fund sector has become stronger for the experience. For the past five years, the number of hedge funds regulated in the Cayman Islands has held firm above the 10,500 level (source: www.cima.ky) and private equity fundraising activity has continued to accelerate. While the current climate remains challenging for start-up funds, the strength of the institutional side of the business and new fintech opportunities demonstrates how a commitment to progress and to constantly evolve presents a bright outlook for the world's most popular offshore fund domicile.

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