

Cayman's Magnificent Seven



Maples: Jersey
Roundtable



Lux funds
in flux



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Luxembourg: funds in flux

As Luxembourg updates its legislation and prepares for a potential surge in new types of fund, what do lawyers anticipate?



For a small country of just 660,000 people, Luxembourg can boast some big numbers. Total net assets in the Grand Duchy's investment funds amount to around €5.2 trillion, making it Europe's largest fund centre, and the second largest worldwide after the United States. The share of net European alternative assets under management held by Luxembourg-domiciled funds increased from 15.6% in 2010 to 61.8% in 2022, according to Preqin.

Luxembourg is also the world's largest distribution centre for investment funds, which are offered in more than 70 countries. Alongside Germany, Denmark, Netherlands, Sweden, Norway, Switzerland, Singapore and Australia, Luxembourg is one of

the very few countries to have highest AAA credit rating from all three ratings agencies: S&P Global, Fitch and Moody's Investors Service. It is therefore no surprise that sovereign wealth funds and large pension funds – attracted by robust regulatory control, legal certainty and tax efficient frameworks – choose Luxembourg for their investment platforms, holding companies, and feeder funds.

The investment funds space is evolving in Luxembourg, which has been updating its legislation and preparing for a potential surge in the establishment of European Long-Term Investment Fund vehicles (ELTIFs), while awaiting revisions to the UCITS Directive and the Alternative Investment Fund Managers Directive (AIFMD)

▲ **The Grand Duchy's investment funds amount to €5.2 trillion, making it Europe's largest fund centre**

from the European Union (EU). Luxembourg is also an EU market leader in ESG – most alternative investments are directed at ESG-compliant investments. The majority are Article 8 funds, which promote environmental or social characteristics and have good governance. A hub for both alternative and retail funds since the introduction of the AIFMD more than a decade ago, Luxembourg looks to be well-placed to continue its dominant position in European funds.

UCITS rebound

So, what do Luxembourg lawyers think?

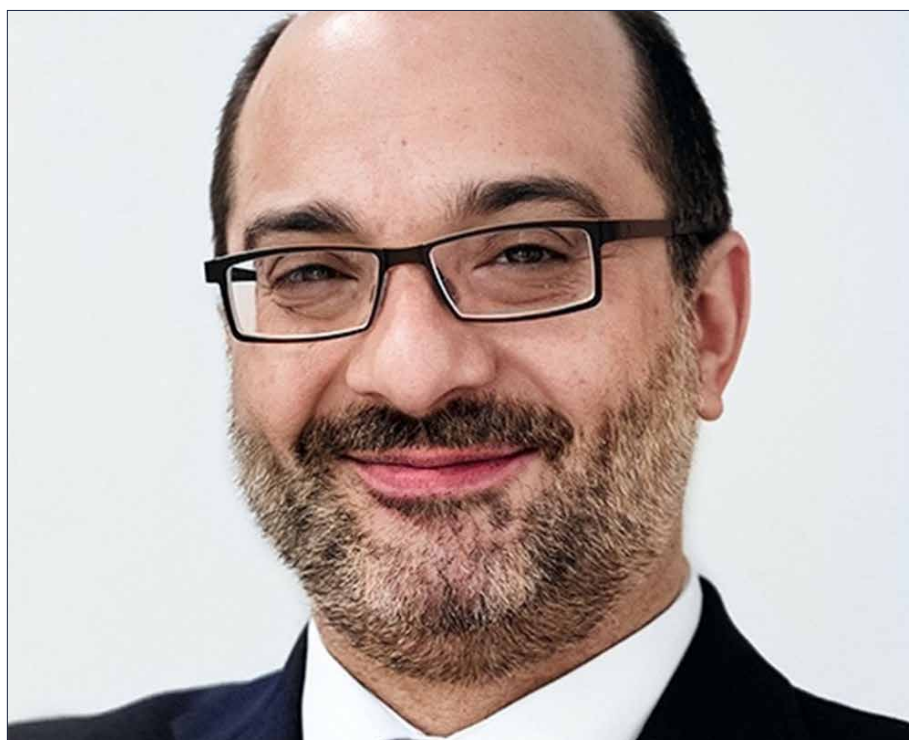
"We're optimistic," says Antonios Nezeritis, managing partner of the local Ashurst office. "Luxembourg remains the largest

funds market in the world outside the US and is still very attractive. We have a second to none funds toolbox, which makes the country very attractive for sponsors and investors. We've seen asset classes that are typically very strong, such as real estate, take a dip; however, tech and digitalisation areas are still attracting investment. We've also seen many clients setting up successor funds or secondary funds."

He adds that "there is less liquidity in the market, with a lot of capital having already been spent, or many investors putting spending on hold. But we remain extremely busy – setting up new funds, not just successor funds, but brand-new strategies. Many are still in the capital-raising period: set up and waiting for investors."

As an experienced UCITS lawyer, he points to a rebound in activity. "Everyone said that UCITS are dead but we've seen, to some extent, a resurgence. The target investors are different. If you go for UCITS, you should target retail investors with certain strategies that work better in the UCITS space." Luxembourg, he notes is the "high watermark" when it comes to UCITS. "In Europe, the Middle East or Asia, they all recognise Luxembourg as the main UCITS fund centre. We're currently at UCITS V, whereas the first UCITS Directive dates back to 1988. That's 35 years, and it's worked well. Maybe a complete revamping of the UCITS directive is needed."

Ashurst is one of several dozen international firms in Luxembourg competing for work alongside Allen & Overy (A&O), Clifford Chance (CC), and Linklaters, US firms such as Dechert, and strong European firms such as Loyens & Loeff. Their chief local competitors for work are the two traditional powerhouses – Arendt & Mederenach, and Elvinger Hoss Prussen (EHP).



“ In Europe, the Middle East or Asia, they all recognize Luxembourg as the main UCITS fund centre

Antonios Nezeritis, Ashurst

Pressure to deploy capital

"EHP and Arendt are big local firms – they've been here for many years – we have them as counterparty on a lot of transactions," says Louis-Maël Cogis, head of Simmons & Simmons' Luxembourg office. "On the opposite side, A&O, Linklaters, CC, are the ones we see most, and Loyens, especially. It depends on the profile of the transaction. If you have international funds to be established, you will see Arendt or EHP more as local advisor to your counterparty. When we have big international transactions in banking, that's more often a regional firm or the Luxembourg office of Linklaters or A&O, typically."

Clients hope for activity to recover soon because there's pressure to deploy capital, he says.

"There are two ends of the spectrum: the long-planned transaction on one side – we'll do the deal in six months' time – or the opportunistic one, that's urgent and immediate. On the banking transaction side, that usually occurs within a month." In asset management and corporate services, he adds "there's been some restructuring – for economies of scale and to increase their client portfolio."

According Pieter Leguit, Simmons & Simmons funds partner in Luxembourg: "There isn't a huge dip in funds being set up, it's just that capital raising takes longer – a longer process to get to first close driven by macroeconomic factors, because most funds we work on don't require regulatory approval beforehand." As for the new funds regulation, he says that it is

"a change of existing regulation; a good thing, because it harmonises what we have with existing EU rules, and creates more structuring flexibility."

Cogis quotes from the most recent FATF report: Luxembourg has a “high level of technical compliance with FATF requirements, and its AMF CFT regime.” It’s still a AAA country, he says “one of the very few. A very good environment to do business – that’s why we’re positive about growth.”

Personal relationships matter

Co-Managing Partner of the Loyens & Loeff Luxembourg office and head of the Investment Management Practice Group, Marc Meyers says: “In rankings, we compete with the magic circle, Elvinger and Arendt. Like Arendt and Elvinger, we position ourselves as a fully independent firm. Funds work is generally originated through referrals from other law firms. We believe that personal relationships matter, which is why our representative offices, notably in London and New York, play a big role because it is an opportunity for us to enhance and develop our existing relationships with our clients.”

He takes issue with some of the firm’s legal directory rankings. “We consider ourselves clearly as Band One for investment funds related work. While this may not be reflected by all legal directories, we believe that those directories still skip the fact that while some of our competitors have built their position historically on UCITS work, the alternatives sector has over the past years become the real growth pillar of the Luxembourg fund industry as a whole.

“We not only have one of the largest fund teams, we are also now the second law firm in terms of number of LPs advised and the third one in terms of all the legal forms of alternatives funds. We are the only leading firm focusing exclusively on alternatives, doing that well, and growing significantly with more



“ We believe that personal relationships matter which is why our representative offices, notably in London and New York, play a big role

Marc Meyers, Loyens & Loeff

than 50 people in our Investment Management practice.”

Meyers believes that the modernisation of fund laws ensures that the Luxembourg toolbox “remains competitive and attractive”. He provides an overview of the funds market this year. “Fundraising is challenging for more asset managers who have launched fewer new funds,” he says. “However, funds that have been launched have become more complex, requiring much more work overall with fundraising requiring more time. Despite fewer new funds, those we have worked on were more complex.”

Consolidation

“There is a consolidation trend at the manager level (for both independent and third-party managers) with big managers taking over smaller managers. We have been busy on various consolidation matters. This means we have had more work than 2022, despite fewer funds being launched.” He notes that “some Anglo-Saxon managers still use Delaware or Cayman for non-EU investors, and Luxembourg for European investors thanks to the AIFMD passport. Some very large managers are looking to launch one global fund in Luxembourg for all the investors.”

Loyens Corporate partner in Luxembourg, Frédéric Franckx, adds that “there is a substantial amount of dry powder, but a lack of deals. Our clients have raised billions in funds, which have not been invested – so, there is pressure on managers.

“M&A started slowly in 2023, but progressively PE firms have used their dry powder to invest,” he says. “We also see more strategic M&A, and more restructuring and reorganisation of ►



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companies. The process itself also takes longer: for example, on the same project we might work for two months, stop for two, work for two, and continue with this process. These M&A transactions will probably emerge next year in better conditions.”

Franckx describes the pipeline of work as blurry. “There are lots of discussions, but it is very difficult to say what will emerge in the future,” he says. “Most industries are reshaping their model. Before, leverage was key – there were low interest rates; debt was cheap. Now they have to reconsider. We see more restructuring – right here, right now – this area will keep us busy. There has been a delay between expectations and reality but it is currently happening.

“If we look at Restructuring & Insolvency expertise, you can consider that there are two major teams in Luxembourg: ours and the one at Arendt, both gathering specialists in Corporate Law, Financing and Litigation.” Eventually, he suggests, there will be more new funds, “potentially combined with restructurings, definitely more exits or deal activity.”

Offshore players

Several offshore players have also chosen to have a Luxembourg office. “In 2005, the Luxembourg market had fewer than 500 lawyers; it’s now 3,000 and still growing,” says Bertrand Gérardin, Ogier’s head of corporate in Luxembourg. “The firm’s Luxembourg office had ten lawyers in 2016; we’re now 47.”

The four big offshore firms with a local footprint – in addition to Ogier: Harneys, Maples, and the most recent arrival, Mourant – all compete for work with an increasingly broad spread of local and international firms across a range of practice areas, including: finance, corporate, tax, litigation and restructuring.



“ M&A started slowly in 2023, but progressively PE firms have used their dry powder to invest

Frédéric Franckx, Loyens & Loeff

Initially, funds work acted as the major catalyst for the explosive growth in lawyer numbers, but this has since evolved. Gérardin explains his firm’s growth story. “We started in Luxembourg in 2012, mainly funds-focused, as the first offshore firm to launch here. Then we added finance and corporate practices. We’ve since added tax capabilities. We used to do litigation within corporate; now we’ve litigation partners who joined from a Magic Circle Firm – the team went from one person in February 2023, to seven now. We believe the next core areas will be litigation and restructuring.”

So, why Luxembourg?

“There’s a drive for international law firms to diversify revenue, while onshore is becoming, for some clients, a necessity – the

domicile dilemma is a recurrent question for certain types of investment. One way to keep clients within the firm is to be able to offer services in all main financial centres. It’s one reason we opened in Ireland and we’ve just opened in Dubai.”

In terms of competition, he says: “For finance, it’s mostly US or Magic Circle on the counterparty, often act for the lender, and they represent the borrower, or vice versa. In litigation, we often act for firms not present in Luxembourg – mostly we’re not conflicted, which enables us to take instructions that big firms can’t, such as acting against major banks and insurance groups.”

Restructuring

Non-contentious restructuring is increasingly important for Ogier in Luxembourg. “Local law is very effective in terms of enforcement of security over company shares,” says Gérardin. “We’ve been acting mostly in FinTech, electric cars.” He identifies a new trend: “Limited partners (LPs) are not really happy with the general partner (GP) or sponsor, and replacing the GP.”

ogier.com/esg

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Ogier

So, we have a new GP entering into some very large funds. They need to restructure the old group. Mostly, this is driven out of London/the US.”

He explains the impact of increased regulation at a practical level: “When I arrived in Luxembourg, you could establish a company and open a bank account within a few days. Now it can take four to eight weeks and it is agitating for clients. This is obviously not limited to Luxembourg. We’re trying to help the clients with the onboarding process and this is one reason we’re starting our fiduciary business.

At a corporate level, he anticipates that “the regulatory wave will not stop any time soon. The EU Council just released the latest draft of AIFMD II. It has been long awaited and the vote is scheduled for February. AIFMD was one of the reasons to open an office in Luxembourg in 2012. It was challenging for clients at the outset, but this has now become an integral part of the EU regulatory landscape.

“We’re actively discussing AIFMD II impact with our clients. This will, inter alia, have consequences on the delegation mechanism and the establishment of loan origination funds. Another topic which will remain in the spotlight is the democratisation of private assets and the revamped ELTIF II regime.” Ogier is looking to add new partners. “The market in Luxembourg is still growing, and we need more people,” says Gérardin.

Start-ups

Vanessa Molloy, head of Harneys Luxembourg Investment Funds team, asks: “How do the local markets see us? As one of the offshore firms with a Luxembourg presence similar to Mourant, Ogier, and Maples. Each of these firms has a different presence in different jurisdictions, affecting



“ For start-up managers, if they say it’s going to be a Luxembourg fund, investors know what they’re getting

Vanessa Molloy, Harneys

their referrals to Luxembourg.”

Harneys focus much of their efforts on start-up funds in Luxembourg. “For start-up managers, if they say it’s going to be a Luxembourg fund, investors know what they’re getting,” says Molloy. “It’s about the saleability of the product. Ultimately, for new managers they want a well-known product that allows for their future growth plans and is easy to explain to investors.

“Cost always comes up on the initial call. The reality is that the fund’s performance has to be good enough to get you over the cost barrier, otherwise you’re not going to keep your investors for fund 2. For start-up guys, certain service providers will often reduce

their costs for the first year; the market still wants to try and encourage that type of manager, particular if they have worked previously at a big asset manager and are now starting their own business. We’re happy to discuss fixed set-up costs with such managers on the legal side. The most important thing is that the manager’s first fund is successful.”

The additional regulations across the funds piece add to cost and time management, according to Molloy. “The industry would say it’s a game changer, but it’s not. It’s a refinement of what’s there already,” she says.

The Irish question

Some law firms in Luxembourg focus on what they regard as its superior offering to Ireland. “On paper, there’s competition with Ireland,” says one prominent funds lawyer. “Maybe US clients go more towards Ireland because of language, culture, common law – historical reasons. But many others choose Luxembourg.”

Cogis says: “We have an office in Ireland. There are areas where we are competitors, such as



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securitisation. Some sophisticated clients see Ireland and Luxembourg as complementary: they set up two structures, one in Ireland and one in Luxembourg. Sometimes, a client doesn't yet know: the Irish team and the Luxembourg team are on a call to discuss the possibilities. In terms of what's possible, structuring wise, there's not really that much difference between the jurisdictions. It's then: what do your investors expect, who are you marketing to, and what strategy are you using?

"The reality is that if you're marketing your funds to continental European investors and it's an alternative strategy – like PE, real estate – then Luxembourg is very well known to them. It's much easier to get investors to sign on the dotted line in a structure that they're very familiar with."

At Ogier, which also has a large Dublin presence, Gérardin adds: If you get new funds wanting to enter into the European market, the choice will depend on the fund sponsor domicile, target investors and choice of strategy. As a fully integrated firm, opening an office in Ireland offers us an additional choice of a major financial centre for our clients and the possibility to accommodate the needs of the grand majority of fund sponsors. Being present in most of the main funds' jurisdictions gives us an agnostic approach on the choice of domicile for our clients."

Harneys does not yet have a Dublin office, but is considering it. Molloy is also agnostic. "Our approach is not to pitch one jurisdiction against the other, as they each have their own strengths. Luxembourg has done excessively well in capturing alternative funds through the innovative SCSp (special limited partnership) option and the Reserved Alternative Investment Fund (RAIF) regime.



“ One way to keep clients within the firm is to be able to offer services in all main financial centres

Bertrand Gérardin, Ogier

"Ireland has always been known for its abilities with respect to hedge funds, which Luxembourg has not really captured. On securitisation vehicles, Ireland has also been more successful. Luxembourg recently amended its securitisation law to allow for active management of repackaged debt, be it in the form of loans (collateralised loan obligations, or CLOs) or debt securities (collateralised debt obligations, or CDOs)."

Regulatory offering

Not all international law firms focus their primary efforts on funds. Pierre Reuter, Hogan Lovells' Luxembourg office managing partner, explains: "The office opened in 2013. The main reasons for opening were funds,

tax and, more generally, real estate acquisitions structured through Luxembourg. Our funds practice is small in comparison to others in Luxembourg, but we work for the same type of clients on the same deals as our competition.

"We've also developed a regulatory practice. It really built up speed with Brexit because we had a lot of questions, particularly with respect to which jurisdiction is the most attractive for UK firms to establish a presence on the continent. We cover all types of financial regulatory areas, including payment services and insurance."

Like Meyers, he has an issue with the legal directory rankings. "Legal 500 and Chambers: we are Tier 3, but we should be Tier 2. Due to the firm's network, we can however compete and are competing with Tier 1 firms – including the big international firms present in Luxembourg. However, we sometimes get the impression that clients might simply go for someone with a larger footprint in Luxembourg."

In terms of more law firms opening a Luxembourg office,

he says that the cake is still big enough for everyone. "I see it as generally positive because it confirms the attractiveness of the Luxembourg market. Often, they're simply bringing in new clients – new opportunities for others to pitch for that work and get it. That's the way it works."

CSSF under pressure

Views on Luxembourg's regulator, the Commission de Surveillance du Secteur Financier (CSSF), tend to polarise. Many acknowledge that they are overworked and potentially understaffed.

"The CSSF of today is not the CSSF of five or 10 years ago – there is a much greater oversight of Luxembourg and, as a consequence, of its regulator," says one lawyer. "The CSSF isn't as flexible as it used to be; it's more conservative, careful and cautious, and less approachable." Another volunteers: "There's a lot of frustration with the CSSF; it needs to be more pragmatic and more flexible, as it used to be."

A third lawyer takes a different view: "The regulator has always been, and still is, listening to the market. The CSSF has carried out considerable recruitment as the regulatory burden increases, especially in relation to ESG, AML and funds and IFMS regulations." Reuter concludes: "The people at CSSF are good, there's a lot of pressure on them. Everyone looks at them, they have the reputation of Luxembourg as a top tier financial centre to preserve. But they need to get closer to the market again."

One of the most recent arrivals in Luxembourg is Pinsent Masons, which launched a full-service law firm in July 2022, having recruited a significant number of former Wildgen partners and their teams. In August 2023, Pinsent Masons hired partner Benoît Rose, formerly Co-Head of Investment Management at Ogier, as head of its funds practice. It was a key



strategic hire for Michel Bulach who heads the Pinsent Masons Luxembourg office and leads the banking, finance & insurance practice.

"We're close to 30 lawyers," says Bulach. "We have five key sectors firmwide: energy, financial services, infrastructure, real estate, technology. We're on track to grow the fund practice, which is central to our offering across all five core sectors."

Rose adds: "We want to build and grow a European team, and target managers in Europe

but also the US, wanting to do business in Europe for fundraising. Luxembourg is building bridges with US managers, US firms, to ensure that within the toolbox and the way we operate, we understand the complexities of how to distribute in Asia, in the US and find solutions in Luxembourg that are compatible."

In terms of referral work, Bulach says: "We have a mix of direct instructions from asset managers and US firms, but also through the UK and Pinsent Masons. Many US managers either have UK

▲ **Industrial and Commercial Bank of China in Luxembourg: the Grand Duchy is a place where European investors can access the People's Republic**

offices or use the UK as a hub. Luxembourg has historically been successful in working for banks, insurers, and asset managers. Switzerland is a very important market for us. We get work directly from asset managers in Switzerland. We also get a lot of work from Pinsent Masons' three German offices."

Bulach notes that Luxembourg has been very good in economic diplomacy as a gateway for Europe. It works both ways," he says. "Luxembourg is a place where European investors can access China. In Luxembourg city centre, you'll see more and more Chinese employees on the street, and the banks get bigger and bigger with more and more office space."

Looking ahead, he says: "We'll continue to grow the fund team, plus other teams. We plan to double the size of the lawyer team in three to five years. Much of the growth will come from financial services."

Likewise, most of Luxembourg's future growth will continue to come from financial services. ●

Channelling growth

Dominic Carman, editor of *Reports Legal*, recently met with Maples' Jersey Head of Office, **Nick Evans**, and local partners – **Simon Hopwood**, **Paul Burton**, **Mark Crichton**, **Tim Morgan** and **David Allen** – to discuss the current Jersey market and the firm's plans for future growth



The Maples Group recently celebrated the fifth anniversary of its Jersey office which complements its British Virgin Islands, Cayman Islands, Irish and Luxembourg legal offerings. Since September 2018, the office has (together with the complementary Jersey fiduciary services business) grown from two to a team of 45 lawyers and professionals, who advise on corporate, finance and investment funds work. The team also offers Jersey entity formation and corporate / administration service solutions and provides listing agent services for the listing of securities on The International Stock Exchange (TISE) in the Channel Islands.

Part of Maples' growth in Jersey includes a newly created Jersey Trainee Solicitor Programme for which the first trainees – Emily

AT THE TABLE

Nick Evans (NE)
Head of Office
Maples Group, Jersey

MAPLES GROUP JERSEY PARTNERS:

Simon Hopwood (SH)
Funds & Investment Management Partner

Paul Burton (PB)
Corporate & Finance Partner

Mark Crichton (MC)
Corporate & Finance Partner

Tim Morgan (TM)
Funds & Investment Management Partner

David Allen (DA)
Corporate Partner

Dominic Carman
Editor
Reports Legal

Garton and Jacob Shenkin, who are both from Jersey – joined in October 2023.

Opening in Jersey

Nick Evans has been a partner with Maples and Calder for over 20 years and became Head of Office in Jersey in 2021.

NE: The decision to establish our presence in Jersey was a natural evolution of the Maples Group's global service offering and carefully complements our existing legal services in the BVI, Cayman Islands, Ireland and Luxembourg and was largely driven by client demand. Although the process took approximately 18 months from original conception to launch, we had been considering it for some time. A group of partners based in London recognised it as a significant strategic opportunity



to establish a strong presence in Jersey. Many of our international clients, who were already working here, required professionals with expertise in Jersey, as well as in the BVI and Cayman Islands, for instance.

Within just three years of our launch, our growth caused us to revise our initial business plan because it didn't provide an accurate year-on-year benchmarking (not least because we achieved profitability in less than half of the time originally contemplated). And that belief and confidence in the jurisdiction fed into the development of our new trainee program – which represents an investment by the Group in the infrastructure, not only of this office but also in Jersey as a whole.

It's an exciting blend of having Maples' DNA from the

very beginning – a greenfield operation, which is quite uncommon – and being a relatively small group. We share similar values and professionalism, but have different backgrounds and perspectives, allowing us to create our unique culture.

The success story can be attributed to a combination of more work from global clients than we initially anticipated and the remarkable effort put in by our team. Paul and Simon were among the founding partners, and we benefited from a healthy mix of referrals from within the Group and locally-generated projects. The first part, integral to our DNA and our evolution from a Cayman-based firm into a global business, stems from the dedication throughout the Maples Group to making this office a success and nurturing business development.

▲ **The Maples Group recently celebrated the fifth anniversary of its Jersey office**

Partners with their own client and intermediary relationships introduced new clients to the Maples Group, which has been a thrilling experience.

We've also had the pleasure of introducing several US and other international clients to Jersey. These clients have found Jersey to be a successful choice for their needs – for example, we have been able to facilitate migrations into Jersey in circumstances where it provided a better fit (for example, particular assets in the structure or the specific requirements of clients). We're steadily growing our presence within the local community, and unlike some other parts of the global economy, we haven't yet been significantly affected by the global slowdown or the prevailing interest rate environment. We continue to support a global roster ►

“ We’ve also had the pleasure of introducing several US and other international clients to Jersey. These clients have found Jersey to be a successful choice for their needs

Nick Evans



of clients who remain active in their core areas.

External factors

Paul Burton, Corporate and Finance partner has been with Maples Jersey since 2018.

PB: Wider macro-economic and geo-political factors impact markets globally and while there continue to be headwinds, these have not substantially diminished activity levels at any of our top sponsor clients. Although we shouldn’t expect this year to resemble 2020 or 2021, when compared to the previous year, it’s evident that these years are far from average. In some ways this situation bears a resemblance to the period of 2008/2009, marked by a surplus of available assets that profoundly influenced how deals were structured, rather than the sheer volume of activity. The significant difference is the level of liquidity that remains in the market.

Some clients are proceeding cautiously, taking into account high valuations from the previous year but on the whole, we would say that buyers and sellers are now closer on valuation expectations. Across various sectors such as real estate, infrastructure, energy and renewables, there is a noticeable shift in sentiment. People are contemplating their investments more thoroughly,

considering whether to commit as much capital. Nevertheless, the availability of funds means that they don’t need to deliberate too long, as investors are seeking returns. The investment process is becoming more time-consuming, but we’re not witnessing substantial divestment activity. This is a positive development; that is, the continuity of investment holding sitting between five and seven years.

Real Estate

Simon Hopwood, Funds & Investment Management partner has also been with Maples Jersey since 2018.

SH: In the real estate sector, the UK market was slow last year with many major transactions

stalled, particularly those reliant on debt as interest rates rose sharply. Large real estate deals remain relatively subdued, but build-to-rent and student accommodation projects continue to thrive. The issue we’re facing is a pricing disconnect between sellers’ expectations and what buyers are willing to pay. As a result, buyers are price chipping and attempting to negotiate better terms with sellers. If an agreement is reached, buyers will explore refinancing options once the debt market regains momentum. This slowdown has left many investors in a state of hesitation.

FinTech deals, on the other hand, are not as dependent on debt, so activity levels remain buoyant. Meanwhile, larger private equity deals have noticeably slowed due to their heavy reliance on debt.

Alternative Lenders

PB: While mainstream lenders had a relatively easy time hitting their targets last year, largely owing to the changes in interest rates, there is now a niche for traditional leverage loans to be provided by alternative financiers. Our private equity clients, who traditionally borrowed from mainstream banks to fund leveraged buyout activity, are now (via their own credit divisions) operating as alternative

“ On the funds front, Jersey has traditionally excelled in private equity and real estate, particularly with a strong growth over the years in the real estate sector

Simon Hopwood



“ We anticipate remaining very active on US and Cayman CLOs

Mark Crichton



financiers to mid-market private equity firms which has ensured ongoing leveraged acquisition activity.

SH: The alternative lending landscape has seen a significant surge, akin to the period between 2008 and 2013. However, there is a slight distinction between then and now. In the crash, funds were compelled to divest portfolios, resulting in assets flooding the market. In contrast, amid the Ukraine crisis and interest rate hikes, this forced selling has not occurred as owners have not been under pressure to sell. Nevertheless, with re-financings are on the horizon, some owners may opt to offload specific assets either to avoid LTV covenant breaches or if they are unable to secure favourable re-financing terms.

This is where alternative lenders step in, offering gap funding. While senior lenders are still playing it safe, typically capping their financing at 60% to 65%, mezzanine lenders are increasingly filling roles that were once the domain of senior lenders. Senior banks are now maintaining a conservative stance, having learnt from the past crisis. Nevertheless, there are undoubtedly opportunities for alternative lenders to step in and provide valuable support.

NE: Key global asset managers, many of whom have roots in private equity or hedge funds, have undergone a significant diversification. With a surplus of capital available, the most desirable scenario for them is to manage an increasing range of assets. We represent 16 of the top 20 global alternative asset managers and most of these firms have developed their offering in alternative debt, whether through dedicated funds, returns within commingled funds, or SMAs (separate managed accounts), which cater to clients seeking exposure to specific asset classes. Given their extensive reach, almost all of them are deeply involved in this space, particularly when returns on traditional

debt were relatively low. These asset managers have invested heavily in building the necessary infrastructure, positioning themselves to take advantage of this opportunity.

Tim Morgan, Funds & Investment Management partner joined Maples Jersey in 2021.

TM: Agree with that. Jersey had been involved in the evolution of the alternative credit market for many years, however as this has developed from a niche mezzanine market into a more multi-strategy market, and particularly, as Nick has said, into a question of the leading sponsors widening their product mix. We have been able to assist a number of global sponsor clients in structuring to particular global investor groups and Jersey has often been the perfect solution for enabling these products, whether as SMAs or as parallel funds. These have often been first time structures in Jersey for those sponsors and complement what they are doing in onshore US, Cayman, and onshore EU structuring. We have also been closely involved in structuring funds to comply with risk retention regulation

Investment Management

SH: As co-head of the Jersey funds and investment management team, I oversee a team involved

“ The collaborative culture is unique, and we have a great deal of interaction between offices

David Allen



“ The investment process is becoming more time-consuming, but we’re not witnessing substantial divestment activity

Paul Burton



in fund and other investment structure formations, as well as a lot of downstream work. On the funds front, Jersey has traditionally excelled in private equity and real estate, particularly with a strong growth over the years in the real estate sector. On the transactional side, while we have been involved in a number of good quality deals, market activity levels were affected by the various economic challenges. When we initially launched, Brexit occurred. Once that was resolved, we anticipated market activity levels to pick up that year, only to be hit by the pandemic and the Ukraine crisis.

Despite the challenging market conditions, we’ve managed to secure some substantial deals. We’ve observed an increasing number of real estate funds positioning themselves for future opportunities when the market rebounds. For inbound investment into the UK, Jersey is a trusted and proven jurisdiction, similar to how Cayman is for hedge funds. Our Luxembourg law firm office was established shortly after our Jersey office launched, strengthening our presence in Europe. In fact, we were the only offshore firm with offices in Luxembourg, London, Dublin, and the Channel Islands. From a funds perspective, this has been highly beneficial, as we engage

in co-marketing efforts with our colleagues in these various locations.

TM: On the private equity side, we’ve seen a very strong mix of new funds as well as follow on funds, some of which are stand-alone Jersey funds and a number of which are also parallel sleeves or feeders combining with funds established in EU centres, particularly Luxembourg and Ireland, as well as Cayman. While many funds opt for Luxembourg, Jersey often provides a perfect fit for private equity where there are global investors or where there is an EU element which does not require full AIFMD passporting. We’re also witnessing a growing number of fund activity in the venture capital sector, ranging from first time funds, feeder funds to co-investment structures.

SH: For US promoters looking to operate outside the EU and avoid the regulatory and administrative burden and costs associated with the AIFMD, Jersey offers a swift and cost-effective solution. It’s an ideal jurisdiction for alternative investment vehicles, co-investment vehicles, carried interest vehicles and feeder funds. We have been collaborating with our Cayman team, especially during the periods when Cayman faced regulatory challenges,

having been placed on the EU black and grey list. In cases where there is a European connection but a preference not to be within the EU, Jersey has provided valuable support. Clients realise that Jersey can, in certain situations, offer solutions that may be more attractive in terms of costs, regulation and procedures.

Securitisation and Structured Products

PB: In the lead-up to the global financial crisis, Jersey was a go-to choice, especially for German, French, and other European banks, for structured finance and securitisation work. The collapse of Lehman Brothers reset the Jersey market in this area however in the last 18 months, this area has made a strong comeback on account of developments in the US collateralised loan obligation (or CLO) market.

Mark Crichton, Corporate and Finance partner, joined Maples Jersey in 2020.

MC: The Jersey Financial Services Commission (JFSC) shared some data with us, revealing that activity levels in Jersey remained quite sluggish until mid-2022. Our exceptionally proficient Cayman team, always on the lookout for opportunities to create new structures for European investors, has been working closely with us. We have constant communication with our Cayman colleagues on these projects, often several times a day. Adaptability and readiness to seize market opportunities are vital traits for our team. Being a small team, you’ve got to be dynamic and able to pivot for market opportunities.

M&A

David Allen, Corporate Partner joined Maples Jersey in January 2023.

DA: My practice is focused on downstream private equity,

public and private M&A and IPOs and I have particular experience advising Jersey companies listing in New York. I also have significant experience in Jersey schemes of arrangement, having played a role in most of the large schemes that have come through Jersey in the last 10 years.

I anticipate that the levels of M&A work will increase in the next year as more realistic valuations will create opportunities and narrow the existing gap between buyers' and sellers' expectations. We can expect a noticeable increase in general M&A activity across various sectors, including infrastructure, wealth management, and the growing interest in biopharma and all things related to medical technologies.

Our office is currently in a growth phase but our approach is quite different from necessarily setting up stand-alone departments, which may not always prove profitable. I have found that the collaborative culture within the Maples Group is unique, and we have a great deal of interaction between offices particularly in the context of business development initiatives.

The Maples brand carries significant weight, especially in London. We concentrate on areas where we excel, and we can easily compete with the other more established Jersey firms.

PB: What initially drew me to Maples was its remarkable growth story. I had spent over a decade at other well-established, Jersey-headquartered firms. What I've truly appreciated about my experience here is the exceptional success story that has come with organic and incremental growth particularly as the Maples Jersey law firm was launched for the Group as a greenfield operation. My specialisation naturally

leans towards downstream private equity work which is the common thread and theme that runs through the whole Jersey practice. What has truly defined my time here has been attracting top sponsor private equity clients to Jersey as a jurisdiction.

Global Market

NE: When you're moving into a very mature legal market with good quality firms, it would be a mistake to underestimate how hard you have to work. It's not a matter of simply putting up a sign and expecting work to pour in based on reputation alone.

In London, which is integral to the effectiveness of the Jersey offering, US firms have moved into a position of dominance in many of our key markets from those in the magic circle who were transactionally dominant 10 years ago. Globally, we have the most-deep rooted and effective relationships with the leading US firms, doing a huge amount of work with them. These partnerships undoubtedly enhance our credibility.

Nevertheless, we must work diligently, staying hungry for opportunities. There's no room for complacency, assuming work will naturally come our way. We need to be determined and consistently perform at an exceptionally high level. Our

journey began with a small team, and over my 23 years at Maples, I've witnessed unmatched accolades for the quality of the work being done in Jersey. The core of our approach revolves around delivering top-notch quality, and we've had to consistently exceed expectations as we've grown our practice. Our relentless commitment to excellence is in the very foundations of our global endeavours.

Strategic Ambitions

NE: We maintain an open-minded approach when it comes to our presence in Jersey. We never had an specific blueprint for what we aimed to achieve here or what "success" looked like – we are constantly striving to push the boundaries of what we can achieve so don't want to be restricted by artificial targets. We recognised there was high-quality work available that we might not access through offerings in other jurisdictions. Ten years from now, who can say what the future holds? Our focus is on continuous exploration and growth. We're not set on occupying the same position as other firms. Our expansion into additional practice areas or growth in terms of size will be determined by the circumstances and opportunities that arise, and we will dig into

“ Jersey often provides a perfect fit for private equity where there are global investors or an EU element

Tim Morgan





the entrepreneurial acumen that is at the heart of Maples Group to help us assess and pursue any such opportunities.

Our global partnership views Jersey in a positive light, as our presence here has contributed to the firm's financial success more rapidly than initially anticipated. While some may entertain the idea that we might eventually become a full-service operation, that's not one of my primary goals. I appreciate the "disruptor" label; we're here to make our mark and don't necessarily intend to replicate what has been done elsewhere.

Local Engagement

NE: In mainland Europe, there can be significant hostility towards offshore centres, and a noticeable lack of understanding about our work, presenting a considerable challenge. To my knowledge, clients haven't raised issues regarding Jersey.

PB: Over the past 15 years, Jersey has set a remarkably high standard in its engagement with the international community. It intensifies its efforts when the industry come under the spotlight. Jersey Finance does an exceptional job in fostering communication links between the Jersey government policy and legislative department, the financial services

sector, and local regulatory bodies. This interconnected dialogue is of paramount importance for any offshore jurisdiction.

NE: We actively participate in those discussions. As members of the Jersey Funds Association and serving on many of the legislative committees, we are fully engaged. We believe that by actively contributing to shaping our destiny and showcasing our value to the jurisdiction, we are playing a crucial role in these dialogues.

Outlook

SH: The real estate market is poised for growth once sellers become more amenable to accepting lower prices. Additionally, we expect a significant surge in North American interest on the private equity front, both upstream and downstream.

MC: Two easy predictions: first, we anticipate remaining very active on US and Cayman CLOs; secondly, we foresee continued growth in core real estate work, particularly in the build-to-rent sector, with new fund launches on the horizon. That's going to be a notable subsector of the real estate market.

DA: In addition to the buyer/seller valuation expectations noted above, there is a substantial

▲ The Maples team in Jersey met with Reports Legal to discuss the current Jersey market

amount of 'dry powder' in the PE market in need of deployment, and we anticipate a resurgence in lending activity when interest rates stabilize, and hopefully, inflation subsides. These factors should generate more M&A activity in the next year.

NE: As private equity funds reach the divestment phase, there's a need for assets to transition to new ownership. We've already been involved in various restructurings at the general partner level and have witnessed some activity between fund complexes. However, there may be a shift towards more permanent capital vehicles, which are highly sought after by sponsors during times when valuations don't accurately reflect the value created.

All of these developments offer excellent opportunities for us to apply our expertise and provide careful, nuanced, and detailed advice regarding fiduciary duties and complex structuring issues. This includes dealing with illiquid assets within an open-ended fund structure and finding innovative solutions to address these challenges. These are certainly interesting times ahead in our landscape. ●

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Balancing legacy and sustainability

Rob Moore, Director – UK, Jersey Finance

There's no doubt the acceleration of sustainable finance and ESG investment has been one of the biggest trends in recent times.

For wealthy families and individuals, especially when combined with a time-honoured commitment towards philanthropy, ESG and sustainability are taking on greater resonance when viewed with an eye on legacy.

However, where sustainability and legacy collide is raising a number of considerations for advisers; while the rise in ESG provides significant opportunities, it naturally also presents a number of challenges and complexities, from the alignment between fiduciary duties and private wealth structuring to governance and adopting a strategic approach.

But with an estimated \$4tn shortfall in investment each year needing to be plugged to meet global net zero targets by 2050, fostering symbiosis between sustainability endeavours and private wealth investment offers a meaningful chance to enact lasting change.

Creating a sustainable legacy

Thanks to significant liquidity events over recent years, a growing number of families are now in a position – often for the first time – to consider the direction and application of their wealth, prompting renewed considerations around legacy and long-term planning.

Of course, the concept of legacy will be unique to each family but

increasingly there is a focus on transferring values and generating lasting positive impact as opposed to financial value alone.

This can, however, pose a quandary where sustainable investments may clash with overarching obligations to act in the best financial interests of beneficiaries.

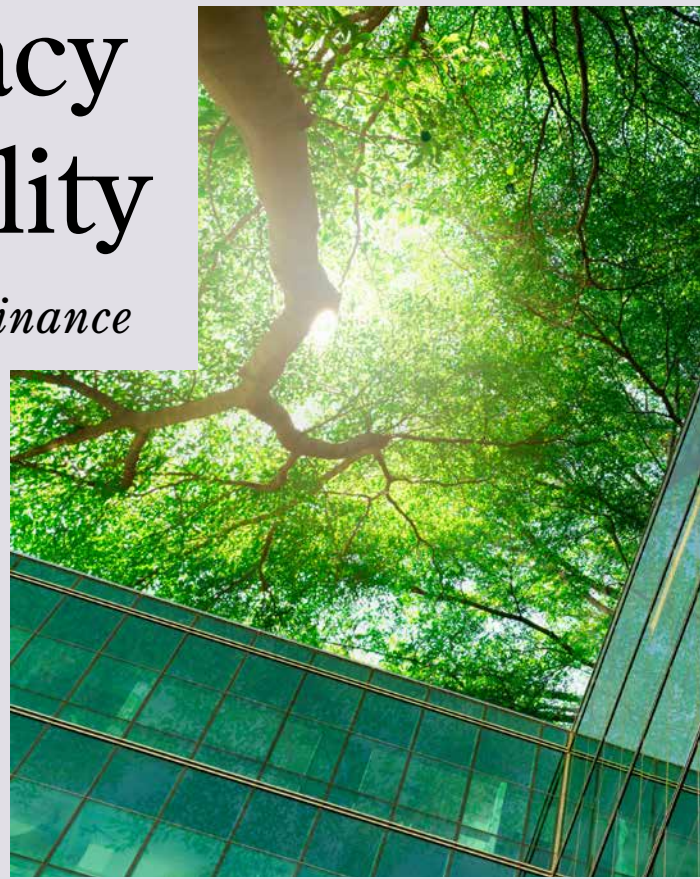
Under English law, trustees' investment powers are rooted largely in the Trustee Act 2000, which provides for a wide power of investment, to make any kind of investment that they would make if they were entitled to the assets of the trust. Further, there are obligations for trustees to take the same amount of care as an ordinary prudent person would take if they were managing their own affairs.

For nearly 40 years, a 'go to' reference point has been the case of *Cowan v Scargill*, which focusses on the discretion of trustees to make investments on behalf of beneficiaries and generate financial returns.

This clearly raises questions around integrating sustainable practice, particularly where doing so might impact on achieving the best possible financial returns for beneficiaries.

What has been seen in recent years, though, is how ESG factors have become more integral to material impact and not necessarily to the detriment of financial performance.

The future, however, lies in ESG being integrated rather than treated separately and



\$4tn
Estimated shortfall in investment each year needing to be plugged to meet global net zero targets by 2050


for consensus to be achieved among beneficiaries. In practice, this means introducing clear references to ESG and impact investing in family charter, constitution and other documents.

A new generation

Post-pandemic, the NextGen has become more influential, taking on greater responsibilities within wealthy families but with a deeper sense of obligation towards ESG concerns.

Consequently, with an estimated US\$15tn expected to be transferred to this new generation of wealth leaders in the coming years, it is becoming increasingly important to be conscious of their drivers.

Alongside a desire to invest in the greater good, the NextGen is being more demanding in terms of transparency, wanting quick access to information and demonstrating mounting concern around greenwashing.



“ ESG has become a core part of the risk management framework and long-term legacy planning of families who are keen to drive positive impact

Rob Moore, Jersey Finance

For these reasons, advisers need to be alive to the need to demonstrate robust ESG credentials and consequently upskilling is likely to be a core part of the fiduciary landscape over the coming years.

Structuring for good

An ESG approach brings with it a need for further considerations in areas such as the tax treatment of ESG assets, whether or not ESG and non-ESG assets should be segregated, a family's risk profile, and the potential for family conflict. Documentation and clear evidence of these sorts of considerations is really important in demonstrating that a prudent approach has been taken.

With families and the world evolving rapidly, there are strong arguments for retaining an element of flexibility within structuring, and caution should be exercised when it comes to 'hardwiring' ESG investing into trust constitution documents, investment policy statements or letters of wishes.

Jersey's trust law in many ways can answer this need and is equipped to provide the requisite flexible framework for ESG structuring. Duties and guidance are built into it but with retained flexibility to enable the courts to respond in line with societal movements, trends and public policy.

This flexibility is a significant benefit, but it does require clear, accurate communication and high-quality documentation to be

maintained in order for bespoke terms and objectives to be understood and beyond doubt.

It also means that advisers need to be skilled in reconciling the competing or differing interests of beneficiaries – if they do not, the very nature of multigenerational trusts means there is clear potential for future litigation.

Moving beyond the challenges

Today, ESG has become both a core part of the risk management framework of families – to the extent that not participating in ESG investing is now seen as a significant threat in itself – and of the long-term legacy planning of families who are keen to drive positive impact.

It is wise, however, to take an incremental approach to integrating ESG and to keep an open dialogue to ensure investments are a good fit.

While there is a current lack of standardisation around ESG regulation, disclosure and reporting, care also needs to be taken to avoid the pitfalls of greenwashing and to ensure investment choices are aligned.

By drawing on Jersey's flexible yet robust private wealth environment, wealthy families have a good foundation that can enable them to tread that line carefully and move beyond the challenges to make sure the legacy they are creating is clear, meaningful and impactful. ●

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Jersey Finance



The Magnificent Seven: *Cayman's world class bench*

'The quality of our judges? It's like explaining that you have Lionel Messi and he's really good; it just doesn't need explaining'



Financial services are a major pillar of the Cayman economy – one knock-on effect is related disputes. In recognition of the need for special procedures in dealing with more complex civil cases that arise out of Cayman's financial sector, The Financial Services Division of the Grand Court (FSD) was created in 2009. Since inception, the FSD has dealt with more than 2,000 such cases.

The Grand Court is a Superior Court of Record of First Instance, within which the FSD is a separate division. The scope of the FSD's jurisdiction is laid down by the Grand Court Rules which

contain a definition of "financial services proceedings." These include proceedings relating to: mutual funds, exempted insurers, contracts of insurance, regulatory laws, administration actions and trust claims, company matters (including winding-up), partnership disputes, claims against professional service providers and arbitration claims.

The FSD is served by seven judges including the Chief Justice, currently Justice Margaret Ramsay-Hale, and three of the other full time Judges of the Grand Court, as well as three part time Judges, who together provide extensive

▲ **The FSD is served by seven judges who together provide extensive experience and judicial expertise**

experience of and judicial expertise in a wide range of disputes including large commercial and corporate cases with a substantial international element.

The current panel of seven judges in the Grand Court of the Cayman Islands (Financial Services Division) is comprised:

Hon. Margaret Ramsay-Hale,
Chief Justice

Hon. Marlene Carter

Hon. Cheryll Richards, KC

Hon. Ian Kawaley

Hon. Nicholas Segal

Hon. Raj Parker

Hon. David Charles Doyle CBE

What Cayman disputes lawyers say about their judges

MAPLES

James Eldridge (JE)

Caroline Moran (CM)

JE: The Cayman Islands has long been recognised for its strong and stable legal system, supported both by its high-quality judiciary and its highly sophisticated professional infrastructure. This has gone from strength to strength in recent years, as both the local legal profession and the bench continue to grow.

CM: The Financial Services Division of the Grand Court is particularly accustomed to dealing with complex high-value, multi-jurisdictional disputes. That has been further assisted by the addition over the last several years of a number of new judges, themselves with extensive experience in commercial disputes. That in turn is seeing disputes resolved with even greater speed and efficiency.

WALKERS

Neil Lupton (NL)

When we created the Financial Services Division of the Grand Court in 2009, the idea was to have bespoke judges dealing with high value international commercial disputes. That's really worked. We have a very high-quality bench – exceptional for an offshore jurisdiction. One challenge is having enough quality judges spending time here. Some sit in the UK and make an extraordinary effort: we're grateful that they come to Cayman as much as they can.

APPLEBY

Sebastian Said

When you compare Cayman and BVI, or Cayman and Jersey, we've more judges in our key commercial Financial Services Court. We have a very experienced, balanced and diverse bench, including three former Chief Justices of other jurisdictions – the Turks & Caicos Islands (our Chief Justice Ramsay-Hale), Isle of Man (Justice Doyle); and Bermuda (Justice Kawaley) – two ex-Freshfields partners (Justices Parker and Segal) and new judicial appointments for an English silk, Jalil Asif, as well as experienced

Caymanian judge, Justice Marlene Carter, who has previously sat as judge across the Caribbean as well as in Cayman.

The number and balance of the judges is better in Cayman than in equivalent jurisdictions. BVI can't offer anything like that; Jersey and Bermuda, perhaps a bit more, but not at that level.

BAKER

Adam Crane

We typically don't have to explain to clients and onshore counsel that we have highly experienced judges and stellar advocates.

COLLAS CRILL

Stephen Leontsinis

We have very strong judges from around the region and the UK.

CONYERS

Erik Bodden (EB)

Jonathon Milne (JM)

EB: Cayman has done an excellent job: we've created a bespoke financial services division within our courts with access to specialised judges. When you go to court with a winding-up petition, a complex commercial dispute, or a difficult valuation exercise, the judges are well prepared. We have a sophisticated and well-tested video-link programme through the court – it's proved to be a good selling point for the jurisdiction.

JM: There's certainty, efficiency and sophistication in the Financial Services Division – the equivalent of the English Commercial Court. Whichever judge is assigned, you know you're getting experience and a quality decision-maker. There's a large body of domestic case law. Cayman can also lean on English common law or other common law authorities. There's not the same lottery factor that you might get elsewhere.

CAREY OLSEN

Sam Dawson

The strength of the Cayman judiciary is a huge draw. They are incredibly industrious,

reliable, and impartial – everything you would want from a judicial bench. They work hard to keep cases moving, issuing judgments at an ever-increasing level, which is fantastic for the jurisdiction. Timely access to Court is always important to clients, and we can usually tell them that we can get before a judge in about four to six weeks on most new applications.

HARNEYS

Andrew Johnstone

It's about size and quality: we've got a really big legal industry and a huge bench with sufficient capacity to hold major trials, like Abraaj, and yet we can still get listings on other things really quickly.

MOURANT

Nicholas Fox

For a jurisdiction of our size, we're lucky to have such a heavyweight bench. There are some fantastic judges. Along with the high quality of work, once you have critical mass of really good people, that seems to attract other good judges.

The quality of our bench is well-recognised by practitioners, including overseas. You don't need to labour this point to them. That would be like explaining to overseas professional footballers that you have Lionel Messi and he's really good. It just doesn't need explaining.

OGIER

Marc Kish

There's a very strong body of jurisprudence locally. Where there isn't a case dealing with the specific issue, we primarily fall back on English authorities and, if necessary, other Commonwealth jurisdictions. The Cayman Court of Appeal is manned by Justices of Appeal from England and Wales primarily, and sometimes other Caribbean islands. Our court of final appeal is the Privy Council in London. Often, we see the decisions of the Grand Court being upheld on appeal, which is a good sign that the system is working as it should. ●

Cayman: The global capital of offshore disputes

Dominic Carman examines why litigants seeking to vindicate or enforce their rights with minimal risk increasingly flock to the Cayman courts



International investors choose the Cayman Islands (Cayman) for a wide variety of reasons.

In doing so, they use Cayman-incorporated entities, confident that any subsequent disputes will be resolved by the Cayman courts with the Privy Council as the final court of appeal. That confidence is founded on the certain knowledge that the jurisdiction is very well served by an abundance of high-quality international law firms with local offices, a specialist judiciary (The Financial Services Division of Cayman's Grand Court) that wins numerous plaudits for its quality and bench strength, and the ready availability of top-drawer

commercial silks from London to argue the highest value, most complex cases in front of them.

Typically, these cases relate either to investment fund disputes or Asian-based businesses – both public and private – which structure through Cayman for operational and tax reasons: for example, nearly 60% of Hong Kong Stock Exchange-listed companies are Cayman-incorporated with most having their principal operations in the PRC.

The sheer volume of alternative investment funds (hedge funds, private equity, venture capital, hybrid funds) demonstrates why fund-related disputes inevitably

▲ **More than 75% of the world's offshore hedge funds are domiciled in the Cayman Islands**

arise: there are 12,000+ mutual funds and 15,000+ private funds, while more than 75% of the world's offshore hedge funds are Cayman-domiciled.

As a steady stream of shareholder and investor disputes make their way through the Cayman courts, fair-value appraisal litigation cases continue to stand out: commonly known as section 238 cases (s238s), they are brought under Section 238 of the Cayman Islands Companies Act.

'Enough for everyone to eat'

For Cayman lawyers, litigation is still the primary form of dispute resolution. The number of

arbitration clauses in agreements governed by Cayman law has historically been quite small, although this is now starting to increase.

"The Cayman Islands is an arbitration-friendly jurisdiction, assisted by the introduction of a modern arbitration legal regime, as well as local arbitration infrastructure," notes James Eldridge, co-head of Maples and Calder's global Dispute Resolution & Insolvency team. "We anticipate arbitration in Cayman continuing to grow, along with arbitration-adjacent litigation in the Cayman courts, such as award enforcement and injunctive assistance, which is available in support of both Cayman Islands and foreign proceedings."

Prominent among a population of 71,500 (according to the 2021 national census), Cayman has more than 1,000 resident lawyers. Both numbers are, however, rising at speed. The 2022 Spring Labour Force survey revealed that the Cayman population had already grown to 78,500. This total includes a remarkable 34,000 foreign workers, which is fuelling 'a population explosion', according to the Cayman News Service.

There are local fears that the 100,000 landmark could even be reached before the next general election in 2025. Some suggest that the number of Cayman lawyers might also grow – increasing up to 20%, or possibly more – by 2030. Demand is certainly there: every firm interviewed for this report talked about growing their lawyer headcount.

Globally, the offshore elite firms have more Cayman-qualified lawyers located in their spread of global offices – from the Caribbean, London and Jersey to Hong Kong, Singapore and Dubai. For example, Walkers has Cayman disputes capability



"We anticipate arbitration in Cayman continuing to grow, along with arbitration-adjacent litigation in the Cayman courts"

James Eldridge, Maples and Calder

in London, Dubai, Singapore and Hong Kong. Meanwhile, in an offshore first, Ogier launched a CAYLUX fund finance offering in 2019, providing combined Cayman and Luxembourg legal advice for fund finance transactions. A Cayman disputes capability might eventually follow.

Cayman is an incredibly successful jurisdiction which does all of the right things, according to Nicholas Fox, head of Mourant's Litigation and Insolvency team in Cayman. "It has recently been removed from the Financial Action Task Force's (FATF) list of jurisdictions under increased monitoring in the area of anti-money laundering and countering the financing of terrorism and proliferation financing (AML/CFT/CPF),

commonly referred to as the FATF 'grey list'," he says.

Andrew Johnstone, head of Harneys' Litigation, Insolvency and Restructuring group in Cayman, adds: "We're a pretty small island. There are about 1,000 lawyers in Cayman; probably the same number again for liquidators, accountants and auditors. A big infrastructure and there's building everywhere. It feels like it's really on the march: most firms are in growth mode." British Virgin Islands (BVI) based Harneys (previously Harney Westwood & Riegels) merged with Cayman firm C.S. Gill & Co. in 2008.

Sebastian Said, co-head of Appleby's Dispute Resolution practice group in Cayman, notes: "Everyone's tried to spread their (offshore) network across all the jurisdictions. In Cayman, they're competing in the same market: you'd think that would make life more difficult. But Cayman has such a market-leading position in setting up the relevant structures – the company, the trust – so when disputes kick off, there's an awful lot of work to go around. It's a sign of Cayman's health as a jurisdiction. The work that's there is growing at the same time the number of mouths to feed has increased. So, everyone can eat." Appleby's previous incarnation, Bermuda-based Appleby Spurling & Kemp(e), merged with Cayman firm Hunter & Hunter in 2004.

Strong and stable

The two largest indigenous Cayman firms – Maples and Walkers – have well over 1,000 staff between them in Georgetown. Their local reputation is acknowledged by their peers in the international offshore world: "Walkers and Maples are the longest established, the biggest, with the largest funds and corporate teams here – absolutely top of the field," says Johnstone. ►

"The island has changed substantially: it's fed into the type of work we do and the type of people we attract," says Neil Lupton, partner in the Insolvency & Dispute Resolution Group at Walkers Cayman. Alongside Rachael Reynolds KC, Global Senior Partner at Ogier, Caroline Moran, co-head of Maples and Calder's global Dispute Resolution and Insolvency team and her fellow co-head James Eldridge, he is listed as Band 1 in Cayman Dispute Resolution by Chambers and Partners. It should be emphasised that Lupton speaks from long experience: "25 years ago, Cayman was a much more typical Caribbean jurisdiction: trusts work and corporate disputes," he says. "The funds industry was just starting to take off: 2000 to 2007 saw an explosion in the Cayman product, particularly investment funds (mainly private equity funds and hedge funds). That boom has continued."

Eldridge says: "The Cayman Islands has long been recognised for its strong and stable legal system, supported both by its high-quality judiciary and its highly sophisticated professional infrastructure. This has gone from strength to strength in recent years, as both the local legal profession and the bench continue to grow."

Moran outlines why Cayman is an attractive place to litigate. "Cayman Islands law also generally places significant emphasis on freedom of contract and giving effect to the parties' bargain – investor certainty is key," she says. "That in turn attracts litigants to the Cayman Islands, who are often looking to vindicate or enforce their rights with as little risk as possible. The availability of costs orders in favour of successful parties can also be an attractive factor for litigants, particularly in contrast to the United States."



“ 2000 to 2007 saw an explosion in the Cayman product, particularly investment funds... that boom has continued

Neil Lupton, Walkers

Against that background, Lupton summarises the local Walkers' story. "It's been year-on-year growth, which I anticipated would plateau, but it didn't," he says. "We have nine partners in disputes and insolvency; in 2010, there were two. All those partners joined the firm as very junior lawyers and have progressed through the ranks – we're very proud of the fact that all of our senior talent is home-grown."

"The team has grown massively to meet the volume of work: the Insolvency and Dispute Resolution team is part of a seven-storey building in Georgetown with over 500 people in it." When it opened in 2013, the 10,000 m² Walkers HQ was described as 'the largest purpose-built office building in Grand Cayman for the oldest law firm on the island.'

Cayman product: global markets

The biggest causative change over the past two decades, suggests Lupton, has been the general use of the Cayman product in the global markets. "It's our 60th birthday in Cayman next year," he notes. "Other Cayman firms whose names have disappeared – Hunter & Hunter, Boxalls, and Quin & Hampson – were amalgamated into the global offshore elite. That's allowed the jurisdiction to grow and attract better quality lawyers. We welcome the competition and are a better jurisdiction for it."

Among his competitors is Ogier. The firm's Cayman office was established in 1991 and officially became Ogier in 2004 following the first-ever transatlantic merger in the offshore world with Boxalls. Marc Kish, Ogier's Global Head of Dispute Resolution, says: "We are currently seven partners and our team is 35 – one of the largest teams in Cayman. It's possible we will grow to eight or nine partners by the end of next year. Our team is of a size and quality that we can take on significant disputes: that's not typical on an island the size of Grand Cayman."

The other big Channel Islands firms followed Ogier's lead. In 2007, Guernsey-based Mourant merged with Cayman firm Quin & Hampson. Fox says: "Cayman has seen a lot of growth and development since 2010, including its legal sector. Back then, we were a two litigation partner practice, now we have six and a team of around 20 people, including support staff. In our experience, teams need to be a certain size to handle the big-ticket international litigation that we specialise in."

"Between our six Cayman litigation partners, we have a combined 100+ years of Cayman



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litigation experience. Five of us are physically in Cayman; one is in the UK. As disputes in the jurisdiction escalate quite significantly over time, we'll probably take on more people to deal with demand." In May 2023, Mourant launched a Mourant Consulting offering in Cayman.

Carey Olsen opened its Cayman office in 2012. Sam Dawson, who heads the dispute resolution, insolvency and regulatory team in Cayman, says: "We have three partners and nine other fee-earners in the Cayman office. Our Cayman-based team is supplemented by large teams in our Hong Kong and Singapore offices. Both of those Asian offices continue to originate an impressive amount of Cayman law governed disputes and insolvency/restructuring work, which adds to a busy workload of jobs generated by the Cayman-based team."

Having opened its Cayman office in 2004, Conyers launched its local litigation practice in 2008. Erik Bodden, co-head of the firm's Cayman Litigation and Restructuring practice says: "Our dispute resolution group is around the same size as most other large firms."

Jonathon Milne, his fellow co-head, adds: "We are at about 15 attorneys and would like to get to 20 in the near future. A strong and stable dispute resolution team of 15 to 20 is the right size."

Disputes aplenty

So, what disputes are keeping the big players busy?

Typical of big-ticket Cayman work, Mourant disputes partners Peter Hayden and Johnny Moffatt have been involved in Primeo, one of the most successful Madoff feeder fund insolvencies. "Peter has been to the Privy Council six times in the last 10 years," says Fox.



"Cayman has such a market-leading position in setting up the relevant structures – the company, the trust – so when disputes kick off, there's an awful lot of work to go around"

Sebastian Said, Appleby

Pointing to considerable private client trusts work and anticipating growth in insolvency and restructuring, he adds: "Over the last five years, we've seen oil and gas, real estate, some retail, cryptocurrency and other specific sectors. Looking ahead, globally, everyone knows that commercial real estate is going to continue to face challenges – as demand remains low and the cost of financing remains high."

At Carey Olsen, Dawson says: "In addition to our usual disputes and insolvency/restructuring work focusing on investment funds, shareholder disputes, and acting for insolvency practitioners, we've been lucky to have a continuous stream of large, high-profile cases

– the most recent being Luckin Coffee and Abraaj, which is a big liquidation with many tentacles. My colleague, Peter Sherwood, is deeply embedded in it. They're in the middle of a three-month trial, which is atypical for Cayman."

The Abraaj Group was a high-profile private equity firm in the Middle East, with an estimated \$14 billion in assets under management. It is currently in liquidation due to accusations of fraud. In Cayman, there have also been proceedings in the Financial Services Division of the Grand Court for and against entities within the Group by parties seeking to recover funds.

Carey Olsen act as liquidators for the Abraaj parent company, Abraaj Holdings in Cayman, alongside PwC. Inevitably, other firms have also been involved in the complex web of Abraaj proceedings. In 2023, Walkers acted as Cayman counsel to Abraaj ABOF IV SPV Limited while Sebastian Said (Appleby) acted for other defendants in the same case. Rachael Reynolds (Ogier) has also acted for the investors and conflict director of Neoma Private Equity Fund IV in their recovery action arising out of the Abraaj liquidation.

Middle East work

Kish notes that Ogier is currently involved in a five-week trial on a high-profile Middle Eastern dispute. "We are currently running two particularly large Middle Eastern cases," he says. "As a firm, we have a lot of contacts in the Gulf region and we have a full-service office practising offshore laws in Dubai, so we are well placed to observe trends in disputes work emanating from that part of the world. We also recently acted for the regulator on some groundbreaking contentious work in the jurisdiction."

At Appleby, Said says: "Our largest case is shaping up to



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be the Port Fund LP – a major piece of litigation across Cayman relating to alleged fraud by individuals connected to the fund. There are two related main sets of proceedings with most of the larger firms involved, plus leading silks.” He anticipates a continued flow of fund-related disputes – “a natural result of Cayman being the preeminent funds jurisdiction. Bigger claims will involve issues related to fraud, other shareholder disputes – such as Wang, Abraaj, Port Fund – and another of our cases, Seahawk.”

Disputes arising from SPAC structures are “an interesting and significant feature from our practice,” according to Moran. “These structures are relatively new, and were extremely popular during 2020-2022. They are now starting to spawn various novel disputes. Maples’ strong existing experience in this space has left us uniquely positioned to advise on these disputes.”

Fund disputes also remain “a mainstay of Maples’ dispute resolution practice, aided by our close ties to our market-leading funds practice,” says Moran. She notes that restructuring work, “particularly emerging from China-based businesses and particularly in the real-estate market,” has also been a key driver. “Maples has acted for the debtors on the large majority of these cases, which have thrown up a series of novel and complex issues.”

At Conyers, Milne adds: “We are engaged on several assignments dealing with failed SPACs, mainly driven by professional advisors and other stakeholders – service providers not being paid until consummation of a deal and then having to fight to make recoveries in connection with an aborted deal.

“In addition, we’re still seeing considerable activity out of the PRC in restructuring, partly



“ The availability of costs orders in favour of successful parties can also be an attractive factor for litigants, particularly in contrast to the US

Caroline Moran, Maples and Calder

because there are so many PRC property developers with holding companies in this jurisdiction. That trend is expected to continue. There’s likely to be fallout from big insolvencies in that space, including disputes between stakeholders and companies for years to come. A number of segregated portfolio companies are getting into difficulty and segregation principles are being tested, both in Bermuda and Cayman. Foreign courts and foreign stakeholders are taking issue with segregation principles and testing those structures for the first time.”

Harneys has always had a very strong Asia practice with work coming out of China and Hong Kong, says Johnstone. “That’s been the bread and butter of this office.” Restructuring in Asia is

almost all Chinese property,” he notes, “We’re acting for the Ad Hoc bondholders on Evergrande and on Fantasia. We’ve got a role in most similar cases, either on the group side or company side. These are among the biggest company debt stacks ever. In Evergrande, many schemes (of arrangement) fell over, but there are three parallel schemes: a Hong Kong scheme, a proposed Cayman scheme, and a BVI scheme. It’s necessary to close off all possible avenues. It remains an interesting but challenging area: the interplay between jurisdictions in Hong Kong and Cayman.”

SPAC disputes explode

He confirms that SPAC work out of New York has “suddenly exploded”, pointing to “endless SPAC disputes about who gets what’s left on liquidation. They’re mostly Cayman SPACs, set up in New York. It may be the next section 238-type development. It’s fascinating. There remains a degree of legal uncertainty as to who’s entitled, then it’s all to play for. The arbitrage play is what makes it interesting.”

Lupton notes that the Walkers’ pie chart of work varies. “A lot of restructuring, even if it’s distressed and contentious, happens outside court,” he says. “Shareholder disputes often happen without proceedings being commenced, but we’re still heavily involved. We still haven’t seen a huge rise in insolvencies in Europe or the US that are impacting offshore structures. But you can never tell where work will come from, or where insolvencies will happen.”

Like all the big offshore firms, he is bullish about potential growth. “There are no limits to our ambition or the size of our team: we’ll have as many people as we need to service the work,” says Lupton. “We see the Middle East growing: we have all seen how Saudi is now an increasingly important influence

on the commercial world. Our Middle East disputes practice will grow. The more Cayman products are used in the Middle East and Asia, the more people are likely to have disputes related to those products."

Invited to offer a Walkers elevator pitch, Lupton duly obliges. "We're demonstrably very good, you can read about us in the press, but you will enjoy the experience," he says. "We tend to work very closely with our clients, we get on with them, we're all human beings. We've been diverse for a long time: people from different countries, different social backgrounds – even people with Northern accents have managed to squeak through! We work incredibly hard; we're very helpful; we're very bright. But crucially, litigation gets stressful and you need

“ Work coming out of China and Hong Kong has been the bread and butter of this office

Andrew Johnstone, Harneys

people you can rely on and enjoy working with."

Relatively new in Cayman, Baker & Partners is a specialist independent offshore litigation and dispute resolution law firm, headquartered in Jersey. "We're a litigation specialist firm," says Cayman partner Adam Crane. "Coupled with the firm's expertise in asset recovery, I've been able to use my insolvency expertise to obtain successful results for our clients on asset recovery related matters.

"We focus exclusively on complex cross-border litigation and we're not afraid to take on an engagement against anyone: be it a bank or a global conglomerate. We're well positioned to pick up conflict work from larger firms: do a great job, get results for the clients, and then package that up, and send them back to those firms."

"We've been involved in several liquidation and digital asset related matters. Our firm also has significant involvement as global counsel on the asset recovery efforts related to the 1Malaysia Development Berhad (1MDB) fraud scandal, working with liquidators and counsel across multiple onshore and offshore jurisdictions." Crane worked on the Atom Holdings matter, the holding company for



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a lesser-known crypto exchange AAX which, he says, “had one of the largest spot trading volumes in 2022 behind Binance, before it went belly up.”

238s – a mainstay

Section 238 of the Cayman Islands Companies Act (s.238) has become a mainstay of successful disputes practices in Cayman. In essence, it gives shareholders two things: i) a statutory right to dissent from the merger of a Cayman-incorporated company; and ii) a right to be paid a judicially determined fair value for their shares, instead of the merger consideration offered by the merging company.

Typically, s.238 has applied to PRC companies that were floated on the NYSE or the Nasdaq, often in the years before the global financial crisis. Many of these companies have de-listed through take-private transactions, potentially looking to re-list in Hong Kong, Shanghai or Shenzhen, where they might hope to create a higher market capitalization. De-listing usually requires majority consent from a company's shareholders. But minority shareholders have a right to dissent and be paid ‘fair value’ for their shares with the amount determined by a court.

In recent years, professional dissenters have actively acquired shares in companies once they announce an intention to de-list. Their objective has been to dissent and demand fair value in appraisal proceedings, potentially resulting in significant premiums being achieved compared to the price they originally paid for the shares.

“Maples Group remains the leading firm in the Cayman Islands on s.238 merger valuation disputes, where we act exclusively company-side,” says Eldridge. “Through a number of historical and



“ There’s a good working relationship between the firms involved on the dissenter side: we work hard to resolve disputes and formulate sensible strategies for everyone to move forward

Sam Dawson, Carey Olsen

ongoing engagements, Maples has achieved unparalleled results for its clients – FGL, for example, being the first and to date only instance in which a company has fully defended the merger price as being fair value. These disputes are typically both complex and high-value, and Maples has built unrivalled experience in this field. Significant amounts of s.238 work is likely to continue for the foreseeable future as more companies continue to delist in the current environment.”

US potential

Lupton offers the following critique. “The majority of these disputes are currently Asian focused,” he says, “although

there are signs that’s changing. Increasingly, the dissenters are funds which specialise in this sort of work and make investments in advance of a merger happening because they see an investment opportunity: they will be able to dissent and extract a premium on the merger price that gives them an ROI. We see potential for claims arising out of US mergers, rather than just Asian mergers.

“Where will they go next? You might see some cases where the merger price is found to be less by the courts. So, people would face a reduction on what they could have enjoyed through the merger. Will they dwindle over time? I thought they would a few years ago, but I was wrong and these claims form an important part of our offering.

“Companies set up now tend to have much more private capital. Some US claims are potentially out there as a result of PE firms squeezing out minority shareholders. The way these deals are put together excludes the private shareholders, making it difficult for them to buy in.”

According to Kish, “the industry of ‘appraisal actions’ (as they are known in the US) began life in Delaware. In Cayman, the cases we deal with are almost exclusively PRC trading entities that are delisting from the NYSE, generally with a view to relisting in China. Many are gaming or tech companies, with a significant public profile in the PRC. We regularly act for dissenting shareholders in those entities, some of whom represent funds who see an opportunity to capitalise from the take-private process.

“We are very active on the dissenter side and are involved in most s.238s coming through the Cayman courts. It’s mostly Maples company side and, typically, Ogier, Collas Crill, and potentially one or two others, on

the dissenter side. We anticipate being involved in more s.238 cases in the coming months.”

Strong relationships

At Carey Olsen, Dawson says: “One thing that differentiates us from most firms is our work on appraisal rights cases/ take-private mergers. These cases have formed a substantial part of my practice since 2020. We’re involved with most of the cases currently before the Cayman courts. There are several Cayman firms regularly on these cases: Maples and/or Harneys on the company side. For the dissenters, it is usually ourselves, Ogier, Collas Crill, Campbells and/or Mourant.”

Dawson points to “four fairly well-advanced actions currently working their way through the Cayman courts: 58.com, Sina, New Frontier Health, and 51job, with a further one announced recently – Chindata.” He adds: “There’s a good working relationship between the firms involved on the dissenter side: we work hard to resolve disputes and formulate sensible strategies for everyone to move forward.”

Said notes that Appleby has been involved in “around a third of the cases pursued in Cayman to date, including Nord Anglia and, most recently, iKang.” It’s still a very important feature of Cayman litigation, he notes. “Some people said, after the Privy Council decision in Shanda Games in 2020, that would be the end of s.238s, because of the minority discount that was expected to be applied. That’s proved completely false. They’re definitely continuing and growing in importance with cases like Changyou (regarding the right to dissent from short-form mergers), and Sina Corp, 51Job, 58.com that are on the way to trial. I don’t think they’re going away any time soon.”

Economics still favour activist hedge funds petitioning, he believes. “In the last two years,



“ Rocco Cecere (pictured) is known as the preeminent 238 practitioner in Cayman. He eats, breathes and sleeps the stuff

Stephen Leontsinis, Collas Crill

we’ve rapidly grown our Hong Kong offering. Unfortunately, some of the corporate side instructions won there have conflicted us out of some of the more recent s.238 cases.

Rocco on a roll

The reputation of Collas Crill in s.238 work is largely ascribed to the capabilities of one man – Rocco Cecere, who is praised by several competitor firms for his ability to win clients and get results.

Stephen Leontsinis, Managing Partner and head of the Dispute Resolution department in Cayman, explains the background. “In 2015, we did a very small 238 matter – the second firm in Cayman to file such a petition. I knew that Mourant was a big player in the space. So, I approached Rocco

Cecere, now an equity partner in Cayman, who runs our 238 practice. He told me he would be able to build up his practice within 18 months. And, true to his word, he did.

“Rocco’s team only does dissenter side work. I didn’t expect there to be that much success, but Rocco has absolutely knocked it out of the park. He’s got a seven-member team. They’re the busiest team in the firm and Rocco is known as the preeminent 238 practitioner in Cayman. He eats, breathes and sleeps the stuff.

“From a jurisdictional perspective, we had one or two petitions lodged at a time. Today, we’ve probably got five or six on the go. A number of activist investors have been buying up minority shares in merger companies. They do their due diligence and realise, on the basis of settlements that could be achieved or of what the court will come down at as fair value, that there’s likely to be a delta in what they pay and what they finally achieve. They’re getting decent returns from their investments and, as such, it’s become an investment strategy for many investment managers, PE funds – 85-90% of our 238 clients are in the PE space.”

Maples and Walkers are the big players in this space (for the companies), he notes. “Maples is probably the tougher opponent: they bring quite interesting arguments. But there’s not much in it.” In terms of competition, he says, “Ogier is the number one, Carey Olsen number two. On the shareholder side, the three biggest players are Carey Olsen, Ogier and Collas Crill.”

Lupton, however, offers a note of caution. “My advice to colleagues running large 238 practices: make sure you’re properly diversified, because they may not last forever.” ●

Cayman clients want London KCs

Despite an abundance of local talent, London's heavyweight commercial silks are invariably the clients' preferred choice to fight big money disputes



If proof were needed of how much local work is done by London silks, the recent Wilberforce Cayman Conference 2023, held in September, provides ample evidence. No less than six Wilberforce KCs travelled to Cayman as speakers: John McGhee KC, Gilead Cooper KC, Thomas Lowe KC, Fenner Moeran KC, Clare Stanley KC, and James Bailey KC. At any one time, there might be a dozen English barristers arguing their case in the Cayman courts, according to a local head of litigation.

Serle Court, Essex Court Chambers and South Square are among the other prominent sets that also do Grand Cayman conferences, invariably speaking

alongside local law firms and accountants.

Geographically, it can work both ways. "We do an annual insolvency conference in London with South Square," says Nicholas Fox, Leader of Mourant's Litigation and Insolvency team in Cayman. "Everyone's got relationships with the leading sets. We also see many others frequently and get on with them well, including Wilberforce, 3VB, Essex Court, Serle Court etc."

The volume of such conferences indicates just how much Cayman work is done by a spread of elite London chambers. "Some well-known London silks practise almost exclusively offshore," notes Neil Lupton, partner in the

▲ A large amount of Cayman work is done by a spread of elite London chambers

Insolvency & Dispute Resolution Group at Walkers Cayman.

Andrew Johnstone, his counterpart at Harneys, suggests that London KCs are used "for cases with size, complexity and value. For a Court of Appeal case, we might use someone like Tom Smith KC (South Square), who's a gentleman and absolutely top of his game. We also use David Chivers KC at Erskine Chambers, Steve Atherton KC at Twenty Essex, and 3VB guys, particularly Matthew Hardwick KC, who's been fantastic."

Sam Dawson, head of Carey Olsen's dispute resolution, insolvency and regulatory team in Cayman, notes that section 238 cases "almost always" necessitate

leading counsel. “The usual approach is to seek to engage one leading counsel to represent all the dissenters: it allows for one voice in court for the dissenter side, with some economies of scale,” he says. “For other larger value cases, we will often engage a KC as well. While leading counsel will typically be based in London, there is one notable exception: Tom Lowe KC of Wilberforce Chambers, who is based in Cayman and whom we regularly instruct.”

It makes a big difference to clients and litigants if you’ve got a choice of jurisdiction on a big case to know that whoever you choose is going to be admitted, according to Sebastian Said, Co-Head of Appleby’s Dispute Resolution Group in Cayman. In terms of favoured sets, “Fountain Court, South Square and Essex Court – we use them a lot,” he says. “We’re also seeing more of 4 New Square: we’re currently working with Ben Hubble KC, and have seen Graham Chapman KC and Graeme McPherson KC increasingly appearing.”

Marc Kish, Ogier’s Global Head of Dispute Resolution, points to a similar list: “South Square, Wilberforce, Serle Court, Fountain Court, Essex Court, Maitland – we work with all of them on a regular basis. Disputes here tend to be of a sufficiently high value that they mandate that kind of quality – and you get what you pay for.”

Sense of collegiality

The Cayman Bar is “quite collegiate”, notes Adam Crane, partner at Baker & Partners. “We all tend to get along quite well.” Kish concurs: “There is a strong sense of collegiality among professionals on the island – there has to be in a community of this size – but we fight hard for our respective clients’ interests. As a result, we’re able to give our clients a good steer on the issues that they will likely face when litigating here.”



“ It’s much more difficult getting limited admission for Junior counsel to appear, and rarely happens in practice. That’s the balance that the Cayman legislature is striking with the health of the local Bar

Nicholas Fox, Mourant

Fox offers an inside perspective. “Cayman is a small legal community,” he says. “The person you’re battling against in court this week could end up representing an aligned party on the next case, lasting 18 months. People who are not friendly, sensible and professional tend not to stick around very long.”

Some concern exists about the dominance of London silks in big money cases. “In my view,” says Kish, “it benefits the jurisdiction to have rights of audience for London barristers.” Said develops the point. “It’s good for the jurisdiction in raising its profile and because it provides great opportunities for junior (and not so junior) local attorneys to work with, and

learn from, some of the best silks around,” he says. “Part of the reason Cayman has such a high profile is because you have high-profile silks coming, which leads to market coverage of their cases, which in turn creates opportunities for local attorneys to do high-profile work.”

There is a distinction, notes Fox. “There are automatic rights of audience for leading counsel, as long as they get limited admission in each case,” he says. “It’s much more difficult getting limited admission for Junior counsel to appear, and rarely happens in practice. That’s the balance that the Cayman legislature is striking with the health of the local Bar. Overall, it feels about right.”

Johnstone adds: “We’ve got good people who were at the Bar, and would prefer, if we can, to do it here. But it’s up to the clients.” Lupton concedes that “there’s a tension between those who prefer Cayman attorneys doing the vast majority of advocacy and those who see the benefit in being able to pick particular experts. We try and get the balance right: a number of us go to court regularly.”

But, he cautions, “the jurisdiction needs to ensure that it’s training younger advocates, particularly Caymanian advocates. We can’t afford to be over reliant on overseas silks.” ●

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