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Cayman Islands committed to aligning with global best practices

By James Williams, Editor in Chief, Global Fund Media

Tax transparency and cooperation with international regulators and governments to guard against tax evasion is something that the Cayman Islands takes seriously. It has, after all, Tax Information Exchange Agreements with all major developed countries and shares information with over 100 countries under the OECD’s Common Reporting Standard framework.

Specifically, Cayman has had a TIEA in place with The Netherlands since 2009. That The Netherlands has just decided to blacklist the Cayman Islands (along with 20 other jurisdictions) has understandably surprised people and one wonders what the problem is, given the island’s commitment to adhering to the OECD’s BEPS Inclusive Framework and the fact it has released a draft International Tax-Co-operation (Economic Substance) Bill, 2018.

As Jude Scott, CEO of Cayman Finance, commented on The Netherlands’ decision: “While discussions and negotiations relating to this and other blacklists are government-to-government processes with the Ministry of Financial Services taking the lead with regard to the Cayman Islands response to this development, Cayman Finance stands..."
ready to support the Government as we protect, promote, protect, develop and grow this important pillar of the Cayman Islands economy.

“As such, we wholeheartedly reject this attempt to tarnish the reputation of the Cayman Islands and our financial services industry, which has been established as a premier global financial hub, efficiently connecting law-abiding users and providers of investment capital and financing around the world benefitting developed and developing countries.”

The draft Bill is the latest in a series of steps by the Cayman Islands to meet its 2017 commitment as an Inclusive Framework member under the OECD’s global Base Erosion and Profit Shifting (BEPS) initiative. It also reflects Cayman’s commitment to meet new European Union requirements modelled on BEPS Action.

As Cayman Finance wrote last month, those who establish Cayman structures do not do so to engage in base erosion and profit shifting activity but because Cayman “is an efficient neutral hub with key expertise in handling complex transactions”.

It added: “We anticipate that our sophisticated clients will adapt as required and take this in their stride. It is worth noting that all of Cayman’s main competitor jurisdictions are in a similar position as BEPS Inclusive Framework members.”

Ian Gobin heads-up the Cayman Islands investment funds team at Harneys. In his view, “economic substance” is going to be the buzz phrase of 2019 as users of international offshore centres and their professional service providers grapple with these new laws and await the regulations and guidance notes from their regulators.

“Of course, it is certainly going to have a huge impact on all international offshore centres, including the Cayman Islands, that’s the point. Call me an optimist, but I view this as a massive opportunity which will further cement the Cayman Islands as the global premier offshore jurisdiction,” remarks Gobin.

With the OECD economic substance regulations being discussed, and with this latest news of The Netherlands’ blacklisting, there is without doubt pressure on places like the Cayman Islands.

“What I think you are seeing is Cayman continues to position itself as the leader in terms of offshore jurisdictions,” says Benjamin Reid, Senior Business Development and Client Service Manager for LatAm, Maitland. “If you compare it to the other offshore jurisdictions, I do think Cayman is doing everything it can to differentiate itself and position alongside the European jurisdictions by saying, ‘Yes, we are an untaxed jurisdiction but we will adhere to your substance rules, we will adhere to whatever you need us to do, to enable us to stay attractive to the market’.”

As the economic substance regulation plays out it will mean that the days of corporates having a holding company without substance (letterbox entities) on Grand Cayman will end.

This is expected to have a huge impact on the number of people coming to Cayman as holding companies will need boots on the ground. Currently in Cayman there are 200 available properties to buy of the 60,000 people or so who live on Grand Cayman.

“All the jurisdictions are being pushed by the changes brought forth by Europe and the OECD - and working to keep up with all global transparency and governance initiatives. Cayman is certainly no exception - but I do think that Cayman is also taking this challenge one step further to position itself as the most attractive and business-friendly offshore jurisdiction,” adds Reid.
The Cayman Islands continues to work closely with the EU to bring its governance regime in line with regulatory expectations. Last year it announced it would be introducing the Data Protection Law to bring the jurisdiction to an equivalent level to the EU in terms of data protection and privacy (with respect to GDPR). And as mentioned in other parts of this report, CIMA has published new guidelines on its AML regime to redouble its commitment to investor protection.

These developments are placing added pressure on directors to Cayman funds but they are simply reflective of where global best practices have been headed. Any sign of shirking responsibilities will be disastrous for offshore jurisdictions given the political climate.

“Fund directors will have to make sure the fund is complying with its obligations as far as data storage and processing are concerned under GDPR,” explains Sean Inggs, Fund Director at International Management Services Ltd (IMS), one of the leading providers of directorship services in the Cayman Islands.

“This might require potential amendments of contractual arrangements with a fund’s service providers to make sure those responsibilities are properly covered off. Board members are going to be expected to ask the right questions of service providers who are holding client data and acting as data processors.

“Cybersecurity and technology risk has increasingly become an important consideration from a governance perspective. One only needs to remind oneself of the position the SEC has taken on this, for example requiring SEC registered investment companies and investment advisors to adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information.

“When board meetings are held, cyber-related questions are frequently asked of the fund manager, the auditor, the administrator, including what relevant policies and protections they have in place.”

The raft of regulatory developments in Cayman last year were by and large introduced to enhance Cayman’s current laws to ensure they stay in line with evolving international standards rather than create unnecessary complexity for fund managers.

Cayman’s appetite and ability to stay at the forefront of these developments and ensure international standards are applied is enabling the jurisdiction to maintain its appeal and its reputation as a well-regulated jurisdiction, in the opinion of Joanne Huckle, Partner at Ogier.

She says that the revised AML regulations have been one area that has attracted particular attention from managers; particularly on the private equity side given some private equity structures were previously out of scope of the Cayman AML regime.

“On the hedge fund side, managers have had to take time over the last 12 months to ensure their outsourcing arrangements meet the required standards; ensuring they have AML officers appointed at the fund level, which is new, and to ensure they clearly document how they deal with AML risks that arise from their investment activities, as well as the Fund’s investor base. That has kept managers quite busy,” says Huckle.

She adds that in 2018 there were some changes to the Common Reporting
Standards legislation, updates to the Ultimate Beneficial Ownership (UBO) regime, "and I think in 2019 Cayman (along with the rest of the world) can expect to see continued regulatory developments. The one big area of legislation that is very relevant right now is the economic substance requirements. This is in response to international requirements and is one of the steps Cayman is taking to meet a commitment it made in 2017 as part of the OECD’s BEPS initiative.

“This is not just the Cayman Government developing initiatives and trying to make things difficult, it is reflective of the world in which we live now. It means Cayman should be able to continue to enjoy a reputation as the go-to offshore funds jurisdiction. It is a positive step, and I think it is important not to lose sight of this.

“A lot of effort and focus has gone into the economic substance law, and perhaps in part as a result of this the Data Protection Law has been pushed back to later in 2019.”

As part of the revised AML regime, CIMA has provided clarification on the terms ‘delegation to’ and ‘reliance upon’ an outsourced party and its expectations where a delegation or reliance arrangement is entered into by a Cayman Islands financial service provider (FSP), such as a regulated or unregulated investment fund.

Reliance is the method most commonly used by Cayman Islands investment funds to meet their compliance obligations.

"It is very helpful that CIMA has clarified these terms," says one Cayman lawyer.

“The key difference is that where reliance is being placed upon someone (i.e. a financial service provider) then that person – the AML compliance officer – would be applying their own AML procedures. For example, if the fund was placing reliance upon the appointed fund administrator to perform part of the AML functions, the administrator would apply their own in-house procedures.

“In contrast, with delegation the relevant financial service provider to the fund would apply their own compliance procedures, which the appointed AML officer would need to adhere to.”

The other clarification is that there used to be a distinction between applying Cayman standards or those of an equivalent jurisdiction. If the latter were being relied on, a gap analysis had to be done between the Cayman regime and the fund manager’s home regime.

Now, if the manager operates from a country whose local regulatory standards are deemed to be lower than Cayman’s then they must adopt the Cayman standards, removing this need for a gap analysis.

Bringing the Cayman AML rules up to date is a positive step. All of the necessary appointments to regulated funds had to be made prior to 30th September 2018 and the actual filings with CIMA needed to be made by 31st December 2018.

As one law firm confirms: “There was a huge volume of funds who needed to make those filings, which is why the deadline was extended to the end of last year in order to help CIMA’s reporting portal cope with the volume.

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Umbrella unit trusts

One area that service providers are seeing clients respond to, with respect to increased investor demand, is tailored solutions; specifically funds of one.

Very often, says Huckle, investors are asking for side letters in particular; they want Most Favoured Nations clauses and they are continuing to apply fee pressure.

“I have seen funds of one being used for traditional liquid strategies (such as equity long/short) but I have also had managers who have been looking outside of their traditional investor base to get capital from places like Japan, for example, and using alternative structures to accommodate their demands.

“Japanese investors tend to want more bespoke solutions. They have slightly different risk profiles, they do huge amounts of due diligence, so getting a product launched can take a lot longer. But the reward for managers that are willing to take the time is that there is a huge amount of capital in Japan,” says Huckle, adding that an optimal solution, whilst perhaps longer to create, is an umbrella unit trust.

“Umbrella unit trusts are ideal because once the umbrella is established, the manager can roll out different unit sub-trusts for different strategies, for different investors, for different terms or even for different service providers. It takes a while setting the umbrella up but I’ve had managers rolling out different sub-trusts quickly and economically as they’ve already got all the documents in place,” explains Huckle, adding:

“We also continue to see some of our hedge fund manager clients move into more illiquid assets. Some have formed hybrid vehicles, some have formed PE-style vehicles, locking investors in; generally investors are happy to be locked in if it means getting a higher return.

“In terms of strategies, I’ve seen a lot of credit strategies launch over the last 12 months, as well as direct lending strategies and real estate debt strategies.”

At Maitland, Reid views Latin America, in particular Brazil, as a key growth market for its Cayman fund administration business.

To realise this, Maitland has focused on ramping up its automation capabilities to support Brazilian fund managers, many of whom use their offshore funds to invest in global derivatives markets. When looking at liquid strategies, the main asset allocations in these funds are on the more exotic than plain vanilla side; options, swaps, swaptions, CDS, etc, as opposed to equities and bonds.

“For the liquid managers we are working with, to meet their reporting requirements, we have to produce the NAV daily by midnight. So, we have had to automate as much as we can. We have plugged in to all
Crypto and digital asset developments

Something that went largely unnoticed in 2017 was the addition of issuing electronic currencies to the list of relevant financial business in the Proceeds of Crime Law, which came into effect in May 2017.

What this means is that if someone launches an Initial Coin Offering (ICO) in Cayman, and issues an electronic currency in the form of tokens, they will automatically be caught by the AML Regulations and will be obligated to do proper KYC on the purchasers of said currency, as well as maintain proper records, etc.

It is to Cayman’s advantage that CIMA hasn’t tried to push through ICO regulations like they have in certain other jurisdictions such as the Isle of Man.

“Cayman has always been a jurisdiction for institutional investors and we’d all like to keep it that way,” commented Jarrod Farley, Partner, Carey Olsen, in last year’s Cayman Islands report. “It gives us a sense that we are properly insulated from the dangers of dealing in an area that affects retail investors. It has worked for us, as a jurisdiction, for a long time and that is what makes us nervous about ICOs, in particular. People are going to lose money. If that’s the man in the street rather than sophisticated investors it is going to raise the issue to the level of national governments and the spotlight will fall on the jurisdictions and service providers that facilitated it. Cayman has to be careful in that regard.”

Admittedly, crypto had a challenging year in 2018; at USD3,645 (at the time of writing), Bitcoin is way off the high watermark it achieved at the end of 2017. But one should not confuse crypto prices with the digital asset arena, at large. In 2018, a number of digital asset projects launched using either stable coins or other security tokens with a pure utility or payment function, which were incredibly well thought out and structured.

“We’ve been working with clients that span everything from video game development through to stable coins or other security tokens with a pure utility or payment function, which were incredibly well thought out and structured.

As the private equity steamroller continues, we predict that the investor chain will come full circle and global investors are also going to start allocating back into the B in BRIC’s.”

of the main brokers’ and order management systems and pricing vendors (Markit, Bloomberg), and it has involved an incredible amount of programming and automation from our side. We have also invested a lot in people, bringing highly skilled fund accountants from Brazil to Cayman to give managers the peace of mind that our team understand the product and can communicate in their native tongue.

“We have onboarded almost 10 new daily fund mandates in the last quarter, a number of which being some of the most prestigious names in the industry. We’ve been able to position ourselves against the bigger fund administrator names and given our approach and growing reputation, we find this resonating with managers who have appreciated our clear focus on high touch service, coupled with client support in the local language. The growing team of Brazilian staff here in Cayman has been a game changer,” confirms Reid.

Looking ahead for 2019, Reid is sanguine about Brazil’s economic recovery programme and future growth opportunities.

“With a stable government I think we will see great things from Brazil in 2019. With the Ibovespa riding high and the real finally falling against the USD, it only bodes well for the domestic market.

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Crypto and digital asset developments

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“We’ve been working with clients that span everything from video game development through to stable coins for gold and silver, to US real estate,” confirms Gobin. “Instead of raising a fund issuing shares the fund promoter issues a token which is linked to the particular piece of US real estate.”

He adds: “I read recently that only about 1 per cent of capital in institutional
portfolios is being used to invest in digital assets but I think that number will rise as the market continues to mature. 2018 saw the price of Bitcoin plummet but I think that fundamentally, investors have taken a long position on digital assets and a short position on crypto.”

Gobin is optimistic on what the opportunities could be for the Cayman Islands as it positions itself to support those developing digital asset projects over the coming years. Indeed, much has been written on the virtues of blockchain technology and how it could, over time, address many of the inefficiencies that exist in the financial services industry.

As more projects and ICOs come on stream, what will be necessary is for service providers (and investors) to exercise discretion.

“We still see a lot of people jumping on the bandwagon,” says Gobin, “when in actual fact it would be far easier and cheaper for them to issue shares or even take loans from investors than to issue tokens, using a mainstream fund structure. That said, from healthcare applications to restaurants and supermarkets – where the provenance from field to table can be demonstrated – and using smart contracts for shipping and logistics: there are many ways blockchain could be used as a solution.

“Some investors are beginning to take long-term investment decisions to invest in blockchain technology projects, as opposed to buying a huge amount of cryptocurrency.”

Given that there is still a question mark surrounding the safe custody of cryptographic assets and how and where the keys are held, cybersecurity is even more important for investment funds which operate digital asset strategies.

“For any of my investment funds which operate a digital asset strategy,” says Inggs, “I have to get comfortable with how the management team and their service providers are going to ensure that these assets are securely held; whether a fund manager is undertaking self-custody or whether they are relying on a third party custodian.

“Cryptographic keys getting stolen while held at either an exchange or a custodian can attract big headlines. Should a digital asset focused investment fund suffer a cyberattack (either itself or via its service providers), there is a real possibility of it being unable to retrieve its stolen digital assets.”

Inggs says that over the past 12 months at least one in five Cayman hedge funds that IMS has seen being set up are crypto related investment funds. One of the most important factors for fund managers to consider, from a corporate governance perspective, is putting the right people on the boards of these funds who have the relevant experience in the asset class of the fund.

With respect to new ICO activity, from a US perspective there remains uncertainty as to how future ICOs will be regulated. Various factors including the bear market that crypto is in right now and the regulatory uncertainty has thrown a huge question mark over whether these offerings will be regarded as securities for the purposes of US laws.

“In the Far East, China has banned certain aspects of cryptocurrency trading. Even though there has been a sharp drop in the number of new ICOs launching the rate of formation of Cayman-domiciled crypto funds remains steady,” says Inggs.

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A Cayman corporate law firm providing outstanding client service on investment funds, mergers and acquisitions, capital markets, private equity transactions, corporate finance, and corporate matters including for Blockchain and digital assets related projects.

Loeb Smith Attorneys    www.loebsmith.com
Could you briefly explain the concept of the Segregated Portfolio Company?

Once registered under the Cayman Islands Companies Law, a segregated portfolio company (“SPC”) can operate segregated portfolios (“SPs”) with the benefit of statutory segregation of assets and liabilities between portfolios.

Under Cayman Companies Law, an SPC is an exempted company which has been registered as a segregated portfolio company. It has full capacity to undertake any object or purpose subject to any restrictions imposed on the SPC in its Memorandum of Association (“Memorandum”). The SPC is able to create one or more SPs in order to segregate the assets and liabilities of the SPC held within one SP from the assets and liabilities of the SPC held within another SP of the SPC.

The general assets and general liabilities of the SPC (i.e. assets and liabilities which cannot be properly attributed to a particular SP) are held within a separate general account rather than in any of the SP accounts.

This statutory requirement for an SPC to make a distinction between “segregated portfolio assets” (i.e. assets of the SPC designated or allocated for the account of a particular SP of the SPC) and general assets (i.e. assets of the SPC not designated or allocated for the account of any particular SP of the SPC) and similarly the distinction between “segregated portfolio liabilities” (i.e. liabilities of the SPC designated or allocated for the account of a particular SP) and general liabilities means that each SP should have, as appropriate, its own bank account, brokerage account, and other accounts to hold its assets to avoid co-mingling with the assets of other SPs and out of which liabilities can be satisfied.

It is the duty of the Directors of the SPC to establish and maintain (or cause to be established and maintained) procedures:

- to segregate, and keep segregated, portfolio assets separate and separately identifiable from general assets;
- to segregate, and keep segregated, portfolio assets of each SP separate and separately identifiable from segregated portfolio assets of any other SP; and
- to ensure that assets and liabilities are not transferred between SPs or between an SP and the general assets otherwise than at full value.

Who, historically, has tended to use SPC structures and what would you say one or two of the key benefits are to doing so?

In the investment funds context, SPCs have traditionally been used as a basis for investment platforms on which a Fund Manager can employ varying strategies and use different SPs to hold and segregate assets relating to such strategies (e.g. trading public securities, bonds and other debt instruments, and certain crypto currencies) on the same SPC platform.

The SPC structure is also frequently used for multi-class hedge funds, umbrella funds and master-feeder structures owing to the various benefits of the SPC structure.
What level of activity have you seen among fund managers using SPCs over the last couple of years and have you noticed growing interest among PE/RE managers?

One of the benefits of our firm having a strong investment funds’ practice for clients in the United States and in Asia is that we get to see and to advise on developing trends for offshore funds and the Cayman corporate structures which are preferred for strategies in both geographical markets for funds.

While the SPC structure has been traditionally used in the manner described above, we have seen SPCs being used increasingly in Asia as the preferred structure for private equity funds, real estate funds, and certain other closed-ended funds that allow investors to participate entirely on a deal-by-deal basis.

The more typical approach for structuring a private equity (PE) or real estate (RE) fund in certain other geographical markets (e.g. the US, the UK) is the LP/GP structure where investors invest by acquiring interests in a limited partnership (LP) managed by a general partner (GP) and investors invest on a blind pool basis.

With this approach, the Fund Manager can attract institutional investors who are either not equipped or do not wish to review investments on a deal-by-deal basis and prefer to rely on the expertise of the Fund Manager or GP. Investors are effectively investing in a blind pool fund and do not have any clear indication at the time they make their investment of any of the underlying assets that the Fund will ultimately acquire. Trust is placed by investors on the reputation and ability of the GP or Fund Manager to source and execute unknown deals on terms that will lead to attractive returns over time.

The increasing use in Asia of the SPC structure for PE and RE funds allows the Fund Manager to create one or more SPs in order to segregate the assets and liabilities of each SP from the assets and liabilities of any other SP. The creation of the SP is straightforward and negates a large number of the requirements for setting up an entirely new exempted company for each new transaction to acquire a portfolio asset. These SPC funds appear more likely to attract non-institutional high net worth investors who prefer overseeing each investment decision. The increasing use of the SPC in this way is, among other things, a result of there being less appetite from many non-institutional high net worth investors to invest on a blind pool basis.

What additional considerations or difficulties, if any, do private equity managers face when utilising the SPC structure to cater to investors’ preference for a deal-by-deal approach?

First, with a typical GP/LP structure, GPs and Fund Managers will have some certainty as to how much investor capital is available for any given transaction. With such an SPC structure, which allows investors to invest on a deal-by-deal, the Fund Manager will not have existing contractual commitments from investors, or that can be drawn down at very short notice, and this can affect the ability of the Fund Manager to commit to underlying transactions in a timely manner.

Secondly, the uncertainty of how much investor capital is available, delays caused by investors’ review and decision period and the need for possible joint venture participation can make it difficult for Fund Managers to bid for portfolio acquisition opportunities on time-sensitive transactions.

Thirdly, as all of the capital raised by each SP will often be used to fund the acquisition of the single underlying asset for which the SP was created, the management fees charged on the portfolio asset are often charged up-front at the launch of the SP as a percentage of the aggregate subscription proceeds and often several years’ management fees are charged in advance. This deals with the issue of the SP not having access to cash to make monthly or quarterly management fee payments after acquisition of the portfolio asset.

Fourthly, some of our Fund Manager clients in Asia have used the deal-by-deal SPC fund as a springboard to subsequently launching a larger blind pool fund structured as LP/GP, thereby allowing themselves time to build a track record, build reputation, and importantly meet demands of investors by utilising Cayman fund structures.
Cayman legal advice with global experience.

The Dillon Eustace funds team is consistently ranked as a top tier law firm for investment funds by IFLR1000, The Legal 500 and Chambers Global. With offices in Cayman and Ireland, our funds partners provide expert international guidance to our investment fund clients.
Cayman still the vanguard of offshore financial centres

Interview with Matt Mulry

The Caribbean Financial Action Task Force’s mutual evaluation of the Cayman Islands at the end of 2017 led to a revision of the jurisdiction’s anti-money laundering (AML) regulations and was the catalyst for the new Cayman AML guidance. The CFATF report recommended enhancing international co-operation, broadening asset freezing powers and offences and expanding the scope of AML regulation.

“These changes to the Cayman AML regime together with the implementation of the Cayman tax information exchange regulations and economic substance legislation are each directed at ensuring that Cayman remains at the forefront of international compliance initiatives,” says Matt Mulry, Partner at Dillon Eustace (Cayman).

“The International Tax Cooperation (Economic Substance) Law was enacted to make sure that Cayman will fall into line with the OECD and EU’s initiatives on fair taxation and that Cayman participates in international efforts to ensure that its companies are not using the jurisdiction to avoid paying taxes elsewhere. The legislation contains similar international information sharing provisions and protections to those put in place to support the Cayman FATCA and CRS implementing regulations which facilitate the exchange of information between international competent authorities.”

In some people’s minds, it doesn’t matter how much forward progress is made with regulation as it relates to the financial services industry, not just in the Cayman Islands but in all offshore financial centres. The perception is that these mysterious tax-free islands in beautiful parts of the world are nothing more than tax havens for the rich and powerful.

Some political lobbying groups would even go so far as to say that offshore jurisdictions are responsible for poverty in developing countries and other ills of the world. There is an anti-offshore jurisdiction message being peddled by some of these groups, which doesn’t help the way jurisdictions like Cayman are portrayed in the mainstream media. There is a perception that IFCs are nefarious in some way.

Even with a more robust AML regime, a beneficial ownership regime and greater compliance demands being placed on fund sponsors, service providers and boards of directors, and the introduction of the Data Protection Law to bring Cayman into line with EU data protection laws - which is expected to be introduced in Q3 2019 - does it really filter through into wider society? It’s difficult to think so.

One organisation that is working hard to help to change international perceptions of the Cayman Islands is Cayman Finance, an industry body established with support from the Cayman Islands Government to spread a positive message about Cayman’s financial services industry.

“Cayman Finance has made a significant impact in re-aligning international perceptions of the Cayman Islands with its CEO Jude Scott regularly supporting and defending the industry via global media outlets,” opines Mulry. “But there is no doubt that international pressure continues to be applied for Cayman to offer greater global cooperation and transparency to ensure it is not a place where money can be hidden from tax authorities or used in a way that gives rise to harmful tax competition.

“The Cayman Government is addressing these international pressures with balanced legislation to ensure that the jurisdiction continues to be respected internationally particularly in its role in the global funds industry.”

Indeed, Cayman was home to 10,889 (as of September 2018) according to CIMA, of
Dillon Eustace

get multiple certified copy proofs of identity and residential address.

“We deal with investors, directors and investment managers who often become frustrated at the duplication of identity verification documents required by all service providers across the industry. If blockchain technology alongside developing AML regulation can provide a solution that allows those service providers access to a confidential verified source of identity verification documents.

“That could be a very neat solution to these practical difficulties speeding up the regulatory process and reducing the costs burden on the end investors.”

Anything that can benefit the end investor should always be welcomed. Global banks are well aware of the disruptive potential of blockchain technology and have begun to develop their own technologies that are much more inclusive of the IT community. Understandably, banking groups have a vested interest in the direction these technology advances, led by blockchain, might take.

Leading fund administrators are also adept at developing and marketing new information technology solutions. There is growing demand among managers and investors for financial reporting to be customised for different fund strategies, assets and investor classes. To address these needs, Mulry says the most progressive fund administrators are building their own IT development teams “who are able to manipulate and design internal software in order to produce reports for their managers and investors in the precise format required”.

All of this makes for a vibrant, energised climate in which to work, with Mulry and his colleagues in Dillon Eustace’s Cayman office taking a positive role in helping to shape and develop legislation in Cayman.

“There will certainly be further regulatory developments in Cayman driven by continuing developments in international regulation and by the emergence of new asset classes including digital assets and Dillon Eustace will continue to participate in industry consultations around these developments, making sure that the interests and insights of our clients are represented,” concludes Mulry.

CAYMAN ISLANDS Hedgeweek Special Report Jan 2019 www.hedgeweek.com 16
Why is the Cayman Islands the premier global financial hub?


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The Cayman Model goes from strength to strength

Q&A with Jude Scott

What is the most important aspect of maintaining Cayman’s reputation as the world’s leading offshore IFC?

The key element that ties together all of our efforts to operate a premier global financial hub for alternative investment funds and a culture of compliance with our laws, regulations and global standards is the world class, legal public accounting, administration fiduciary and asset management professionals that make up the Cayman Islands financial services industry. Our approach as an industry – what we call The Cayman Model – puts extraordinary value on our business culture and the women and men who maintain it.

Cayman is home to the world’s top professionals in areas such as corporate and director services, legal services, public accounting, banking, wealth and asset management, insurance, reinsurance and capital markets. They are vital to the success of our industry and our culture of compliance. Cayman has been ranked as the Top Specialized Financial Center by The Banker for nine years in a row. We have also been voted Best Hedge Fund Services Jurisdiction and top Offshore Captive Domicile. That professional excellence is at the core of our reputation as a leading International Financial Centre.

What difference is Cayman Finance trying to make, in terms of how the jurisdiction is perceived internationally, by managers, investors as well as regulators?

Our international engagement is centred around clearly telling the story of The Cayman Model. The Cayman Model unites outstanding individual jurisdictional leadership with the highest levels of multilateral cooperation. We want to ensure fund managers and investors around the world understand that Cayman Islands has an incredibly diverse financial services industry, which enhances our ability to draw in a wide range of investment as well as talented professionals and maintain an exceptional world-class business culture. For regulators, The Cayman Model demonstrates our commitment to meeting global standards for transparency and cross-border cooperation with tax and law enforcement authorities.

How would you assess 2018, in terms of the initiatives you worked on? Were there any particular highlights that stand out?

Last year was an exciting time for Cayman Finance as among our many initiatives we made progress on developing a concept known as a Certified Digital AML ID. A regulated Certified Digital AML ID platform ultimately could be used to validate the identity of investors and funds wishing to participate in areas underpinned by technology such as Blockchain and others. It will offer significant potential efficiency, cost-savings and compliance benefits for the funds industry to expand its use of Fintech tools by creating a single point of entry for investors and funds to a secure, closed system. This Certified Digital AML ID will allow the tokenisation of funds and trading in secondary markets while being fully AML compliant. We’re excited to continue developing this concept in 2019.

What approach do you take to developing and shaping dialogue with Cayman industry practitioners and CIMA, to present a united front to the global funds industry?

Cayman Finance is comprised of member
firms representing our jurisdiction’s foremost legal, public accounting, banking, insurance, investment funds, administration, trusts and corporate services companies among many others. Additionally, we represent 15 industry associations and take a very collaborative approach on developing and coordinating industry-wide responses on legislative and regulatory consultations through working groups on subjects like Anti-Money Laundering. The Cayman Ministry of Financial Services and Cayman Islands Monetary Authority also are very accessible and receptive to input from the industry coordinated through Cayman Finance and we work collaboratively to develop innovative and effectively regulated new financial services products and services to anticipate and meet market demand.

What will Cayman Finance be focusing on in 2019? Are there new markets you will be looking to raise Cayman’s profile in?
In 2019, Cayman Finance will continue to focus on mature markets like the United States. We are also very actively engaged in promoting our role as an extender of value for the UK as it manages the Brexit process. We also recognise that substantial opportunities exist in maturing markets in Asia and Latin America. We plan to build on enhanced engagement initiatives in China that began in 2018 and will include working toward close partnership with industry associations in Hong Kong and mainland China. Finally, we expect to increase our outreach in Latin America, and especially Brazil, where Cayman funds have already played a key development role through the World Bank’s International Finance Corporation.

Finally, overall, how would you assess the health of Cayman’s funds industry? Especially given the fact that it has just recorded its highest ever number of registered companies, growing 7 per cent year-on-year.
The Cayman funds industry is very strong. Global investors are increasingly engaged in a flight to quality – relocating their resources based on sophisticated assessments of which financial centres offer the best combination of:
• a global network and diverse industry;
• a neutral legal and tax environment;
• high regulatory standards and respect for privacy;
• world class professionals and credibility. Very few international financial centres meet those qualifications – and none do it as well as the Cayman Islands. In fact, we refer to it as the Cayman Model and it is driven and supported by the quality of professionals physically within the jurisdiction and a strong balanced legislative and regulatory framework.
Let’s get to the point: we understand funds. Ogier’s specialists have been at the forefront of fund set-up, structuring and finance since the inception of the industry with many actively involved in drafting the key laws that underpin fund structures across our international jurisdictions. We act for banks, financial institutions, funds and promoters, working with blue chip clients with established track records and the most innovative and entrepreneurial new sponsors entering the market. We pride ourselves on providing responsive and practical advice, while our hands-on, partner-led teams ensure a consistent approach.
Hot topics – blurring the lines, independent advice and downstream trends

Q&A with Joanne Huckle

As someone who advises both hedge funds and private equity managers, are there common themes affecting both sets of clients?
The once-rigid boundaries between the hedge funds industry and the private equity industry are becoming blurred – we’re seeing traditional hedge fund managers increasing investments in private equity opportunities such as real estate and illiquid private debt, a marked growth in the number of new hybrid fund launches, and institutional investors and family offices alike are reallocating capital to private equity funds in search of higher returns. In the background of course, new legal and regulatory burdens that apply equally across both industries are starting to level the compliance playing field.

How is the ever-shifting balance between investors and managers affecting the role of legal counsel?
2017 was a record year for capital put to work and distributions back to investors, generating a cycle whereby investors have more money to invest back in the industry. As we run into 2019 we’re seeing a time in which fund sizes are getting larger with (especially in Europe) no trend of capping fund sizes; it is also a time when many managers are back in the market with their next fund in just two years. Consequently, investors have more choice than ever, and they know it, making them extremely disciplined and selective.

How is that playing out in practical terms?
Increasingly, I am instructed by LPs seeking their own Cayman legal counsel prior to committing significant capital to a new fund. The relationship between GP and LP is delicate, particularly in the early stages when the parties may be new to each other – it requires a balancing act and a careful negotiation; sitting on opposite sides of the negotiating table, depending on my instruction, keeps me on my toes.

With 2018 behind us, what do you expect to be the hot topics in 2019?
We are seeing huge changes and opportunity emanating from digitisation, fintech, crypto and digital assets; but the fundamentals are also changing at a fast rate – we are dealing with an evolving investor base, as well as the impact of legal and regulatory change on the industry. But for those trying to predict the future, as they consider taking the plunge with a start-up or a spin-off, the best advice I have heard from those that have recently done exactly that is to focus on the fundamentals: taking your time, doing your diligence, evidencing your track record and surrounding yourself with a strong team.

We’re not far into the year, but what are the early signs looking like?
Valuations remain high; but there is also a more positive message regarding a robust M&A market. In particular, venture backed IPO volumes have picked up over the course of the year. It seems likely we may continue to see a trend of venture backed companies being bought up by PE funds as ‘growth’ assets. The increase in downstream activity is what makes my job particularly rewarding, seeing a fund through formation and then helping it put capital to work is exciting. I think I can be justifiably hopeful that deal volume growth is set to continue with increasing momentum well into 2019.
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Cayman’s laws well equipped for maturing digital asset market

Interview with Ian Gobin

The cryptocurrency market is predicted to reach USD1 trillion according to Smartereum as the market capitalisation continues to grow. Currently, the estimated size of the crypto market is approximately USD417 billion, a very modest number and one that remains dwarfed by other traditional and alternative asset classes. To put things into context, global private equity alone raised more than USD453 billion in 2017.

So despite all the hype and hyperbole surrounding cryptocurrencies, the fact remains that this is still a nascent asset class. That is not to say, however, that the wider ‘digital asset’ marketplace is not set for significant growth. In many respects, over the last couple of years, it has matured and the size and nature of digital asset projects has continued to evolve.

Cayman is well positioned as it already has laws in place to navigate digital asset projects. As a jurisdiction, it hasn’t needed to substantially adapt to the evolution of this asset class, and there is a genuine mood of real optimism among industry practitioners, including Harneys, one of the Cayman Islands’ leading law firms.

“The global dominance of the Cayman Islands and BVI in the investment funds world has really helped these jurisdictions when it comes to attracting global, smaller public and private digital asset projects,” says Ian Gobin, who heads-up the Cayman Islands investment funds team at Harneys.

Where other jurisdictions have jumped-in and adopted often unworkable new laws and failed to understand the space, albeit with good intentions, Gobin believes 2019 will see the Cayman Islands amend a number of its existing laws “to further align itself with this new industry in a favourable way to further encourage global promoters of digital asset projects to the Cayman Islands”.

“I think because of these laws that are going to be in place it will push Cayman even further apart from other offshore jurisdictions and become even more widely used globally. I’m feeling very optimistic. Institutional investors have, to a large extent, remained on the side lines in the digital asset space however there will interest from that sector in regulated products,” he says.

Harneys committed to being the market leader in the digital asset space several years ago and regards itself as the ‘go-to’ offshore firm for ICOs, STOs and crypto-asset funds.

“The revolution that started in January 2017 continued into 2018 and we positioned ourselves front and centre of that revolution because at Harneys we believe in the technology,” asserts Gobin. “Cayman was well placed to deal with the deluge of deals in 2017 as the existing AML laws in place were appropriate in the digital asset context. Unlike Switzerland, Bermuda and Gibraltar, for instance, Cayman did not need to introduce new legislation.

“Going forward, Cayman will need to tweak various laws now that the digital asset space has continued to evolve. Some ICOs do need to be regulated in my opinion. So 2019 will see some regulatory changes but it will not involve a whole new raft of regulation.”

Between 2017 and 2018, the nature of digital asset projects changed. They are now much bigger and better thought out and the promoters are better quality. They know they have to adhere to global security laws and
understand the need for robust KYC/AML procedures on all of their investors.

The nature of these projects varies widely, but in general, they tend to involve software coders teaming up with investment management teams to develop new ideas. “We’ve been working with clients that span everything from video game development through to stable coins for gold and silver, to US real estate. Instead of raising a fund issuing shares, the fund promoter issues a token, which is then linked to the particular piece of US real estate,” notes Gobin.

Part of the growing maturity of this space is the recognition by entrepreneurs that they might, in certain instances, have to register their Initial Coin Offering tokens as securities with the local regulator (i.e. the SEC). Two recent examples of the failure to register include Airfox and Paragon Coin Inc, two cryptocurrency start-ups who were fined by the SEC.

“Some people believed that all they needed to do was raise money and had absolutely no idea about global securities laws. As the industry has matured, many of them are now beginning to understand how these digital asset projects need to be treated. They follow developments in the digital asset industry and they see what the SEC and other global regulators are doing. Those launching projects in 2017 were pioneers. Today’s newcomers are standing on the shoulders of those early pioneers and launching faster to get ahead of the game,” says Gobin.

As global investment managers have adopted cultures of compliance, so too are promoters of digital asset projects – many now know what it means to be a fiduciary of third party monies/crypto. Service providers have equally upped their game and evolved in terms of what they can provide, which is making it easier to set up structures.

“We’re seeing more service providers offering a wider and deeper variety of services to digital asset projects, ranging from coin provenance and distribution services to insurance and AML/KYC services at initial launch as well as secondary trading reporting solutions on tokenholders,” continues Gobin.

Not every ICO token will be treated as a security. Every digital asset project has to be looked at individually and assessed as to whether or not its business constitutes “relevant financial business” in Cayman. If so, then enhanced AML and KYC will be required on token holders. “If it’s a payment system project there will be some form of regulation, if it’s a token to be used on a platform to buy services, there might not be. It’s too simplistic to say that all ICOs will need to be regulated and all tokens will be treated as securities.

“There is a lot more colour now in terms of what this industry looks like regarding the issuance and the characteristics of tokens. It remains an incredibly interesting space and I’m sure 2019 will see even more evolutionary strides and innovation, as well as more interest from institutional investors as they explore the investment opportunities of digital asset projects,” concludes Gobin.
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Benjamin Reid
Cayman Islands
+1 345 814 5919
benjamin.reid@maitlandgroup.com

Pedro Olmo
New York
+1 305 989 9931
pedro.olmo@maitlandgroup.com

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Carnival looking to come early for Brazilian asset managers

Interview with Benjamin Reid

Prior to the election of the new Brazilian president Jair Bolsonaro, in October 2018 after winning 55 per cent of the vote, there had long been a trend among Brazilian fund managers to allocate capital offshore to invest outside of the country. Now, as the markets begin to stabilise, investors - both locally and globally - are starting to reconsider Brazil again for investment opportunity.

For fund administrators such as the Maitland, who have become increasingly active in Brazil over the last four years, this shift represents a significant opportunity to assist managers with their offshore investment vehicles - typically designed to allow for trade in currencies outside the Brazilian real, however now with a focus back on Brazil, managers will be looking to raise capital outside Brazil, typically fed through a feeder entity.

Benjamin Reid, Senior Business Development and Client Service Manager for LatAm, confirms that over the last eight months alone, Maitland’s AuA has grown by approximately USD1 billion with respect to Brazilian fund clients with a further USD500 million expected in the coming months. Moreover, he asserts that Cayman is the jurisdiction most commonly used by Brazilian managers looking to access offshore markets.

"By all indicators, President Bolsonaro is most likely going to be pro-markets and give the financial sector the much-needed boost they have been waiting for since President Dilma’s impeachment,” says Reid. “If we look at how the markets have reacted since his confirmation, it has been positive, and this has lead a lot of interest for new mandates since the election. From a capital raising perspective, this couldn’t have been a better outcome.

“One space in particular where managers are taking advantage of cheaper, distressed assets is private equity, where launches from managers such as Jive Investments and Starboard Restructuring Partners have been particularly interesting."

The end of the stagnant years?

Brazil’s investment funds market is highly regulated and on a par with Europe. Liquid funds require investment managers to deliver a daily NAV, which has to be published to the regulator each morning. With the Brazilian Real being a non-deliverable currency, the requirement sets out that Brazilian FX futures and options that are non-deliverable must be settled domestically. For Brazilian fund managers running liquid strategies and wanting to develop a hedge they must set up separate offshore investment vehicles – Cayman has historically been the jurisdiction of choice for these vehicles given its pro-business and easy of working mentality.

While most markets suffered heavily during the global financial crash in 2008, Brazil weathered the storm well and arguably had some of its best years from 2008 through to 2013. However, as 2014 brought about some change and just as Brazil was getting over their post-carnival hangover, the country was gripped by what is conceivably the biggest global corruption scandal seen to date. The Lava-Jato scandal sent Brazil into a nosedive and its financial markets suffered the knock-on effect.

2016 saw the country hit rock bottom when
Dilma Rousseff, Brazil’s 36th president became the second President to be impeached (followed by Fernando Collor de Mello back in 1992). The fall in the Real/USD ratio (from 1.98 in early 2013 to 4.10 in 2015) coupled with high volatile markets lead to a flight to safety and a shift from pure domestic-focused investing for most liquid managers.

The Cayman Islands, again through its deep history with Brazil, offered managers with solutions to weather the storm.

Moving into 2019, it would appear the pendulum is beginning to swing back the opposite way. Now, says Reid, “for the first time in a while we are seeing managers looking to raise more money in Brazil as well as offshore.”

Managers are setting up offshore vehicles to attract global investors and invest their capital back into Brazil. This is especially true of the private equity space.

**Illiquid leading the charge over liquidity when it comes to US Capital**

“A number of prominent US private equity managers are taking sizable bets on the Brazilian economy, and they are using Cayman and Canadian vehicles to achieve this in joint ventures with Brazilian fund managers. Distressed assets and real estate have been a big focus of investment activity,” says Reid.

Earlier in 2018 for example, Apollo Global Management entered into a strategic partnership with Starboard Restructuring Partners to pursue corporate special situation and distressed investment opportunities in Brazil.

“What we have seen a lot of from Brazilian fund managers in the illiquid space looking to raise Capital offshore is the use of a closed-ended feeder fund set up as (Cayman) limited partnerships to mirror the terms of a domestic Brazilian Fundo de Investimento em Direitos Creditórios (‘FIDC’) fund,” explains Reid.

When raising outside capital to invest back into the Brazilian fund (typically passing through a Delaware LLC) that is responsible for opening the non-resident Brazilian bank (4373) account. All told it is quite a convoluted process. However, with the prospects of some good years ahead, “we are seeing managers taking the plunge and setting up structures and planning road shows for Q1 2019,” says Reid.

“The Brazilian local fund (typically FIDC’s) is archetypally where the assets are held, with the US Delaware Master fund and Cayman feeder structured as limited partnerships being mainly used for Investors. We haven’t seen the Cayman LLC being implemented that often. It would be different if the Cayman entity was being used to hold the underlying investments but it is only used as a capital raising vehicle.

“The ones we see making the most noise are these bigger name brands. That said, over the last six months we have seen some smaller managers setting up offshore funds. We’ve onboarded two big names in the last few months and a handful of managers launching with USD20 million or thereabouts, in the hope of attracting additional offshore capital.”

Reid says that Brazilian fund managers historically turn to Europe on a less frequent basis than Cayman because of the cost and complexity. Even the most sophisticated fund managers struggle with European fund structures - diversification regulations in Luxembourg, the need to have a risk manager and a locally appointed custodian and depository create an added layer of costs which if you are predominately targeting the US for capital, doesn’t make sense.

“This said, with the OECD putting pressure on offshore jurisdictions some managers are of the impression that jurisdictions like Luxembourg offer better solutions. Cayman, though, is still where we see the majority of our mandates coming from,” concludes Reid.
Legal, Corporate, Fiduciary & Compliance

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Ranked 'Tier 1' for Investment Funds
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Enhanced AML regime puts Cayman on firm footing to oversee digital asset growth

Interview with Caroline Heal & Ed Pearson

2018 was an extremely busy year for Walkers, one of the Cayman Islands’ leading international law firms. The firm saw a tremendous amount of activity in private equity and related downstream corporate work, while with respect to hedge funds the Cayman team was busy doing restructuring work. “We had instructions in relation to changes to fee terms, to re-energise products and make them more attractive to current investors and new investors. Overall, we were very busy across the group,” says Caroline Heal, Partner, Walkers’ global Investment Funds group.

The last 12 months has certainly seen Cayman continue to implement global best practices to meet the expectations of international regulators as it seeks to uphold its reputation as the world’s leading offshore jurisdiction. CIMA has enhanced its anti-money laundering (AML) regime which takes a risk-based approach and clarified that unregulated closed-ended funds, such as private equity and real estate funds, must comply with the AML regime.

“The main regulatory development in 2018 was a series of refreshments to the Cayman AML regime. It’s mostly been a series of helpful clarifications on points and questions that we were asked to advise on frequently.

“The changes have brought new obligations for funds that we’ve had to help people navigate through. Walkers, as well as fiduciary services businesses and fund administrators have all acted quickly to support their clients and offer solutions, which underlines the quality of Cayman’s service provider community,” says Ed Pearson, Senior Counsel within Walkers’ global Investment Funds group.

One key enhancement of the AML regime is the requirement for Cayman funds, regulated or unregulated, to appoint natural persons to act as anti-money laundering compliance officer (AMLCO), money laundering reporting officer (MLRO) and deputy money laundering reporting officer (DMLRO).

Heal feels that these changes made to Cayman’s AML regime has reinforced Cayman’s position as a jurisdiction fully in line with global standards on AML. “I think it continues to strengthen the reputation of the Cayman Islands in this area. It hasn’t been particularly difficult to make the changes that are in these new pieces of AML law and guidance. The quality of the regulatory regime and service providers is second to none,” says Heal.

With digital asset strategies becoming increasingly popular with fund managers and Initial Coin Offerings (ICOs) being used by fintech entrepreneurs, issuing tokens to fund their business development activities, the need for a robust risk-based regulatory regime is timely. Digital assets, led principally by a proliferation of cryptocurrency strategies, are still in many respects an inchoate asset class.

“There is a distinction between funds that are investing in cryptocurrency or digital assets versus ICOs being launched by entrepreneurs.

“We’ve worked on a lot of cryptocurrency
One of the challenges with ICOs is that many are marketed broadly and therefore have a multi-jurisdictional component to them. The SEC has issued guidance on this subject, particularly in light of some ICOs falling foul of US securities laws because the tokens they have issued are, in the SEC's view, securities.

As *Coin Telegraph* reported on 27th November, 2018, both the SEC and fellow regulator the Commodity Futures Trading Commission (CFTC) have adopted the perspective that while Bitcoin is not considered a security, various ICO tokens are subject to individual scrutiny.

"I think we've been clear that Bitcoin isn't a security, but many of the ICOs that you see and talk about – they are securities," Jay Clayton, chairman of the SEC, told CNBC.

It is something to keep an eye on over the next 12 months as Cayman seeks to balance attracting digital asset investors and applying sufficient regulatory oversight, without introducing unnecessary risks to its highly valued investment funds industry.

One other area that Walkers has been tracking relates to the nature of board compositions to Cayman funds. The majority of Walkers' hedge fund clients have a majority representation of independent directors. This has largely developed in response to the increasing demands of institutional investors.

"There has been a trend for independence at the Master Fund level with the use of a governance board and oversight by independent directors. In the private equity space, more investors are pushing for seats on advisory boards and LPAs are asking advisory boards to do more. It's the continuance of a trend that has been in place for a while," observes Pearson.

Heal notes a related trend: "We see managers looking for directors with specific backgrounds so they get the right balance on the board."

"We now see people with a wide variety of backgrounds, including more traditional public company boards, valuation committees and other experience that isn't necessarily rooted in the investment funds industry. Walkers regularly assists clients in finding the right balance for them," concludes Heal.
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On 3rd December 2018, the Cayman Islands Monetary Authority (CIMA) published amendments to December 2017’s AML Guidance notes on the Prevention and Detection of Money Laundering and Terrorist Financing. Under the AML/CFT regime, a clear distinction has been made between delegation and reliance with respect to how an investment fund manager handles its AML obligations.

Many Cayman hedge funds go the ‘reliance’ route, using a trusted service provider whose own AML officer performs the duties in line with the service provider’s own compliance framework. This is unlikely to change under the AML/CFT regime, but CIMA will expect fund managers to check that the service provider’s AML measures are sound and robust.

This is another step forward in the evolution of Cayman’s compliance regime and will require directors of fund boards to apply close scrutiny to service providers performing AML/KYC duties to the fund.

“The directors of a Cayman fund have the ultimate responsibility for the fund and its activities and that is the case for AML,” says Sean Inggs, Fund Director at International Management Services Ltd (IMS), one of the leading providers of governance and directorship services to the investment fund industry in the Cayman Islands.

“In almost all cases, a Cayman fund will enter into an administration agreement, which should be with a reputable and (if relevant to the administrator’s place of business) a licensed and regulated entity. Under that agreement, the practical duties of collecting and verifying investor KYC/AML are carried out by the fund administrator.

“They report their findings back to the fund board, which oversees the administrator’s activities to make sure everything is going according to plan and that the administrator’s AML/KYC policies and procedures (on which the fund relies), are being adhered to.”

As corporate governance specialists, Inggs says that IMS has welcomed the introduction of changes to Cayman’s AML/KYC regime.

“CIMA now requires all investment funds, whether they are regulated or not, to appoint three AML officers. Those are the AML Compliance Officer, the Money Laundering Reporting Officer and the Deputy MLRO. Those roles have to be fulfilled by individuals and not by corporates.

“The AML/KYC guidelines and legislation that are now in place are crystal clear in terms of how these regulated entities need to conduct themselves and what they need to be aware of to combat terrorist financing and general money laundering,” adds Inggs.

In his view, there is a strong argument that Cayman is better equipped to oversee and handle AML issues than some larger onshore jurisdictions. There is a specific requirement for parties to document an investor’s source of funds – investors must be specific as to where their monies have come from for the purposes of investment into a Cayman fund. Those individuals are then put through sanctions and compliance checks to make sure those monies are not coming from a sanctioned individual or country.

“Not only is there directorship oversight of the fund’s AML policies,” says Inggs, “the fund (and its investors) now gets the benefit of additional officers who have to undertake specific duties related to the fund’s AML performance and its adherence to AML policies, as well as reporting to the board of directors.

“Overall, this is a positive development for the industry and demonstrates that Cayman is cooperating with onshore regulators and complying with global compliance standards.”

Inggs is of the view that if a fund’s independent director acts in any of the three AML officer roles, it can lessen the risk of a potential conflict as opposed to one of the fund manager’s employees being appointed, who may have a direct connection with investor take-on and/or the dealing and trading process.

With respect to the MLRO, it is their duty to file a suspicious activity report with CIMA, should they learn of any fraudulent activities in the fund.

“Therefore, I believe that best practice would be for a fund manager to appoint someone independent of their front office/management activities.

“We see this as an opportunity to strengthen funds’ AML processes. Notwithstanding increased regulation, Cayman continues to be seen as the jurisdiction of choice for offshore entities,” concludes Inggs.