

Cayman responds to global regulation challenges

Interview with Matt Mulry

Last year's Weaving case, in which Justice Jones QC examined in detail the role of independent directors and the operation of a Cayman fund, proved to be a watershed moment for the Cayman Islands.

Neither of the Weaving Macro Fixed Income Fund's directors was Cayman-based or registered with CIDA (Cayman Islands Directors Association). Rather than harm the island's reputation, their failings helped accentuate the good work of Cayman directors and "re-affirm what Cayman directors have been doing", says Matt Mulry, partner at Dillon Eustace (Cayman).

"The case shone a light on the director's role as an independent check on managers of Cayman funds, as well as monitoring fund administrators and custodians.

"Subsequent to that case there's been a number of directorship service companies established in Cayman which are independent of local law firms and administrators, and I think that's going to be a growing industry for Cayman," explains Mulry.

In many respects, Cayman has responded in tandem with rising global regulatory standards and shown itself to be in tune with what needs to be done to improve transparency and governance of investment funds. "There have been some sensible judgments coming out of the Grand Court of the Cayman Islands this year, where the focus has been on the construction of a fund's offering and constitutional documents which describe the fund's offering terms," comments John Fox who heads up the litigation practice for Dillon Eustace in Cayman.

Says Mulry: "The decision in *Re FIA Leveraged Fund* gave support to the use of a special purpose vehicle to distribute illiquid assets as redemptions in kind. This was a valuable tool implemented by fund directors and managers during the financial crisis to manage illiquidity. However, whilst the



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mechanic itself was supported, its particular application was not considered to have given commercial effect to the fund's obligations to its investors.

"*ABC Company (SPC) v J & Co Ltd* saw support from the Court of Appeal to the principle that the insolvency of one segregated portfolio of a Cayman segregated portfolio company will not affect its other segregated portfolios and looked to the construction of the fund's documents to determine investor's reasonable expectations. Similarly *Tempo Group Ltd. v Fortuna Development Corporation* looked to the drafting of fund documents to determine whether pre-judgment interest on unpaid dividends should be awarded." "Each of these cases demonstrates that a Cayman fund will be held to the commercial terms agreed with its investors and confirms the international standing of the Cayman courts."

Further evidence of the Cayman Islands' commitment to enhancing investor protection is the fact that from this year Master Funds which have CIMA-registered Feeder Funds are required to register with CIMA under the Mutual Funds Law. "This will allow regulatory enforcement against a Master Fund and enable a regulator-controlled investigation to protect investors' interests," says Mulry, adding that "even though not every Master Fund will necessarily need to be registered, (those with only one Feeder), in keeping with the spirit of good regulation most will choose to register."

Mulry thinks such regulation, and proposed moves for CIMA to regulate Cayman directors, is helping to further boost the Cayman Islands' reputation on the international stage: "In line with the regulatory approach, which has made Cayman the leading jurisdiction for funds, these developments give added protection and comfort to investors but at the same time don't impede business in the Islands." ■