

CAYMAN'S INDUSTRY GOING FROM STRENGTH TO STRENGTH

Despite a challenging international regulatory environment and global upheaval, Cayman's private wealth structuring industry is prospering



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Of late, not a year goes by without another attack on international finance centres. This is mostly driven by, at best, a misunderstanding of why the quality ones exist, although often involving rather cynical politicking within the likes of the Organisation for Economic Cooperation and Development.

Added to this, while the global economy has hardly stalled, we have been living in interesting times politically and economically. Nevertheless, Cayman's industry forges on, perhaps even leveraging off such tectonic change.

Stronger reputation

In the most recent Global Financial Centres Index (March 2019), Cayman jumped eight places to 21st, just below Chicago and somewhat ahead of the other British Overseas Territories and the Crown Dependencies.

So it is clear that Cayman's financial services industry, and reputation generally, is continuing to strengthen. For high-profile wealthy families, the reputation of the jurisdiction in which they have their structures is increasingly important.

Post-Panama and the Paradise Papers, there has been a flight-to-quality, bringing a shrinking of the unwelcome bottom end of the global market, which was not in any way occupied by Cayman.

Working well through obstacles

Cayman has, of course, had to deal with, first, the Foreign Account Tax Compliance Act, then Common Reporting Standard, registers of beneficial ownership and, now, economic substance. While each of these have required the Cayman government and private sector to work hard, by and large they have worked well together; on the one hand, to avoid blacklisting but, on the other, to minimise negative impact.

A good example is the recent economic substance law, which included specific carve-outs, not just for the all-important investment funds but also for

not-for-profits and companies limited by guarantee and their subsidiaries. This has also been particularly relevant for private wealth holding structures, limiting the definition of a holding company to a pure equity holding company.

In the past, Cayman has led the way in introducing what were then considered novel solutions. Think asset protection laws, reserved powers laws, firewall legislation and purpose trusts, all of which are now part of the global industry planning fabric.

In 2017, Cayman enacted yet more cutting-edge legislation with the creation of a new type of company – the foundation company. This combines all the best elements of trusts and civil law foundations in a familiar company form. Just one of the many uses will be to simplify, say, a complex licensed trust company as trustee of a purpose trust to hold the shares of a private trust company for it to act as trustee of a discretionary trust structure into one foundation company.

In increasingly transparent times, where simplicity of explaining a structure has become a major consideration, such ability to rationalise is invaluable.

In the pipeline are enhancements to the trusts law, such as a statutory Hastings-Bass rule and improvements to the current laws on variation of trusts and the firewall legislation.

The industry can only keep on gaining momentum

What of the longer term? This is difficult to predict, but one reasonable assumption is that the present move towards the requirement for substance through the decision makers and other functionaries, and even the family members themselves, needing to be offshore can only gain momentum. Allied to which, the new reality is, whether for personal security reasons, political or economic risk reasons, or even just lifestyle reasons, the younger generation of ultra high-net-worth families are becoming increasingly mobile, as are their businesses.

It is fair to say that Cayman is, on the one hand, a safe, secure, politically and economically stable tax-neutral international finance centre with world-class infrastructure, easy accessibility and welcoming property owning and residency laws for wealthy families. And, on the other, it has all the benefits of living on a beautiful Caribbean island. Cayman will be ideally placed.

**B E D E L L
C R I S T I N**

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