

CAYMAN FUNDS: RECENT DEVELOPMENTS

Tania Dons & Maree Martin – August 2009

Fund Numbers Increasing

The total number of mutual funds in the Cayman Islands has increased in the second quarter of 2009, reversing a declining trend, according to the latest figures released by the Cayman Islands Monetary Authority (“CIMA”). The number of mutual funds licensed by CIMA grew by over 1.2 per cent to 9,825 from 9,705 in the previous quarter. It is the first time license numbers have increased since the financial and economic crisis impacted the number of funds late in 2008.

Cayman Moved onto the OECD’s White List

Cayman’s commitment to international tax transparency standards has been recognised by the OECD which has moved the jurisdiction onto the OECD’s “White List” of jurisdictions that are compliant with international tax transparency standards.

Cayman Gains IOSCO Membership

CIMA became an ordinary (full) member of the International Organisation of Securities Commissions (“IOSCO”) in June 2009. This membership is important to the financial services industry in Cayman as it should open doors to some international markets that were previously closed to direct investment by Cayman funds, e.g. India.

Changes in the wake of *In the Matter of Strategic Turnaround Master Partnership Limited* (12 December 2008, Cayman Islands Court of Appeal)

While the decision in *Strategic Turnaround* turned on the particular provisions of the constituent documents of that Fund, it has certainly had a more general impact, particularly with respect to the drafting of constitutional documents of Cayman Islands’ investment funds. In particular, fund documents are more often specifically providing for suspension of redemption payments and include tighter terms concerning when redemption is effective and an investor loses its rights as a member in the fund. There has also been an increase in investor scrutinization of the terms of fund documents, as decisions of the Cayman courts highlight the necessity for clear enunciation of redemption rights and suspension powers.

Following this decision, it is clear that a redeeming investor becomes a creditor on the redemption date. There remains an open question as to whether a decision to suspend redemption payments may be successfully attacked on the grounds that it is oppressive to a minority.

Increased Transparency For Funds?

CIMA is presently reviewing the idea of expanding the amount of information they make available regarding investment funds, in an attempt to enhance transparency. This is still in its early stages and there will be extensive consultation with stakeholders before any changes are mooted or implemented. This may mean, for example, that the names of the directors of funds may be published by CIMA.

Amendment of Companies Law and Partnership Law

Amendments have recently been made to Part V of the Cayman Islands Companies Law, relating to the winding up of companies, which modernize that part of the legislation and clarify existing law and practice.

The Exempted Limited Partnership Law was also amended in May 2009 in response to industry needs (the use of exempted limited partnerships in private equity and alternative investment funds has grown extensively since the law was first enacted). Notable changes include:

- the list of activities limited partners can undertake without risking loss of their limited liability status has been expanded;
- the statutory requirement that a general partner must consent to transfer of a limited partner interest has been removed;
- registers can be kept in electronic form and should now list commitments as well as contributions; and
- the provisions regarding dissolution have been considerably expanded.

Proposed EU Regulation of Investment Managers

On 29 April 2009 the European Commission published a proposed EU Directive to regulate alternative investment fund managers in the EU. Most importantly for Cayman, the Directive provides that only funds domiciled in Europe can be marketed by EU authorised managers in Europe. However, it is not expected that the Directive would come into force until at least 2011 and for a three year period thereafter, EU authorised managers will continue to be able to market Cayman funds, under existing rules, in the individual member states. Further, the Directive contains a passporting mechanism under which non-EU funds may be marketed in the EU provided that certain conditions are fulfilled, e.g. that there is a tax information exchange agreement between the territory where the fund is domiciled and the relevant EU country. The Directive is likely to be the subject of significant debate and amendment. Accordingly, it is not yet clear what form the regulation of investment managers in Europe will finally take.

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Notes to Editors

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