

CAYMAN ISLANDS OPENS FINANCIAL SERVICES DIVISION OF THE GRAND COURT

Nigel Meeson QC – November 2009

Cayman Islands opens dedicated Financial Services Division of the Grand Court for the resolution of complex international financial disputes

On 1st November 2009 the Financial Services Division of the Grand Court of the Cayman Islands opened for business. This was part of the reorganization of the work of the Court into five separate divisions. Alongside the Financial Services Division (“FSD”) sit the Civil Division, Criminal Division, Family Division and Admiralty Division.

The FSD will hear the following cases:

- (a) any proceeding relating to a mutual fund, including an action by or against its directors (in the case of a corporate fund), its trustee (in the case of a unit trust), its general partner (in the case of a limited partnership), its investment manager or adviser, its administrator, its prime broker or its auditor;
- (b) any proceeding relating to an exempted insurer, including an action by or against its directors, insurance manager or auditor;
- (c) any action for breach of a contract of insurance (including an application for a declaration) where the amount claimed exceeds \$1 million;
- (d) any application (including an appeal by a licensee) made to the Court under any of the regulatory laws;
- (e) any administration action or application under the Trusts Law except those relating to the estates of deceased persons who died domiciled in the Islands and the net asset value of the estate is less than \$1 million;
- (f) any action against a trustee or protector of a trust or the executor or administrator of an estate for breach of trust or breach of fiduciary duty, except those actions relating to a trust or estate whose net asset value is less than \$1 million;
- (g) any application made to the Court under the Companies Law, including any application made in a winding up proceeding;
- (h) any application for an order for the dissolution of a partnership which carries on business as a mutual fund, including any application made in the dissolution proceeding;
- (i) any action for breach of contract or breach of duty by or against a professional service provider, except for actions relating to the non-payment or over-payment of fees where the amount claimed is less than \$250,000;
- (j) any application for an order for evidence pursuant to a letter of request, including any related application for directions;
- (k) any application to which the Grand Court (Bankruptcy) Rules, 1977 or the Foreign Bankruptcy Proceedings (International Co-Operation) Rules 2008 apply;
- (l) any action for the enforcement of a foreign judgment, whether at common law or pursuant to the Foreign Judgments Reciprocal Enforcement Law; and
- (m) any action for the enforcement of a foreign arbitral award pursuant to the Foreign Arbitral Awards Enforcement Law.

The new Court rules in place provide for “Commercial Judges” to be appointed to sit in the Financial Services Division. In addition to the three permanent judges, Chief Justice Smellie, Justice Henderson and Justice Quin, three appointments have been made who will sit on a daily basis as required. These three are retired English Commercial court Judge Sir Peter Cresswell, Angus Foster QC, former head of litigation at Walkers, and Andrew Jones QC, former head of litigation at Maples & Calder.

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In announcing these appointments, the Governor of the Cayman Islands said:

“There are increasing numbers of financial cases, and their continued speedy disposal is important to the Islands’ sustained competitiveness in international financial services ... I am therefore pleased that the Court has now formalised its work in the financial services area with the new division and the appointment of additional judges, all of whom have considerable expertise in this area.”

He also pointed out that the Division’s introduction follows years of planning and infrastructural development by the Judicial Administration. This includes redeployment of personnel to facilitate dedicated administrative and registry staffing, and the development of courtrooms wired for technology to assure speedy resolution of trials, an outcome critically important to the financial industry’s success. Another important outcome will be the consequent reduction in costs to litigants and to the Government.

The Court’s financial service’s case load has an intake of about 200 per year, with an average disposal rate of within twelve months. The standard period of resolution for complex stages of these cases is six months. The Chief Justice observed:

“This is a highly competitive rate of disposal and it is with the objective in mind of ensuring, or even improving on, this rate of disposal, while maintaining the high calibre of decisions for which our Courts are known, that we have established the Financial Services Division. The dedication of other divisions will also, of course, enable us to ensure that the domestic business of the Court continues to be dealt with in the timely and efficient manner that it also deserves.”

Proceedings in the FSD are governed by a new rule, Grand Court Rule Order 72. This provides for the Registrar of the FSD to create and maintain a computerized record of FSD proceedings including a chronological index of all documents filed together with copies of all pleadings affidavits (without exhibits) skeleton arguments (without authorities) and orders.

Every FSD proceeding will be assigned to one of the six judges who will conduct the trial of that case. FSD proceedings will be subject to case management and within 3 months of commencement a summons for directions will be issued by the Registrar unless the parties have initiated a summons for directions. To assist with the international nature of the cases before the Court, the summons for directions may take place by video conference if it involves a foreign lawyer.

The Cayman Islands can now offer a truly first class service for the resolution of complex financial services disputes with the ability to call on up to six well qualified and experienced judges to ensure that cases are disposed of efficiently and with the minimum of delay.

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This article is not intended to be a substitute for legal advice or a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

Notes to Editors

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