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## Grand's masters

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M&A activity has seen a dramatic return to health after the recession. Rolf Lindsay explains why investors should look to Cayman

As dealmaking returns to the boardroom there has been a notable increase in appetite for the use of international financial centres such as the Cayman Islands and the British Virgin Islands to structure complex transactions efficiently.

With improved stock markets, record high-yield bond issuance and relatively low borrowing rates, the underlying conditions for strong M&A activity are positive.

These macro factors are reinforced by activity at the coalface: the value of private equity-driven buyout deals surged during 2010. Data from Thomson Reuters indicates global M&A activity neared \$250bn (£156bn) for the first four weeks of 2011, resulting in the most active January for more than 10 years and almost double the level for the same month a year ago. Recent research from BDO, meanwhile, shows an 83 per cent surge in the number of completed private equity deals in 2010 to 1,928, with expectations for a continuing rise this year.

It is now commonplace for M&A deals to have a distinctly cross-border character, particularly those involving the emerging markets, and 2011 is shaping up to be an extremely busy year for M&A professionals.

### **Bolt-on solution**

The past 12 months have been particularly active for small- to mid-cap transactions as companies of that size broaden their horizons and become more global in their investor bases and strategic outlooks. Conservative cash-management practices mean dry powder is in store. With modest expectations for organic growth investors have instead looked to bolt on acquisitions to add size and expertise to their existing businesses and to enter new markets.

This is being repeated at the other end of the spectrum, and the re-engagement of private equity powerhouses in public transactions has accompanied one of the busiest starts to a year in terms of dealflow.

Regardless of sector and size, investors and directors in the global marketplace share common values. First, their capital sources, and the companies in which capital is deployed, are increasingly global.

Second, with the absence of historic levels of leverage investors are looking to invest in more concentrated equity securities. The growing prevalence of club deals and joint ventures serves as means to hedge that exposure.

Accommodating a variety of interests means that deals are more complex. The panacea for structuring such transactions is a jurisdiction that offers tax neutrality and the ability to structure and manage portfolio companies with multiple investors and multiple layers of debt and equity as effectively as possible.

Some jurisdictions offer benefits for tax planners structuring M&A transactions, thanks to certain treaty arrangements.

In other instances the employment of structures formed in jurisdictions in which targets operate is unavoidable. However, concern is often expressed that the ability of such jurisdictions to deal with corporate, financial and administrative matters

in a way that is commercially attractive to the parties makes such arrangements frustrating to manage and positively nightmarish to litigate.

For international financial centres such as Cayman, tax neutrality is therefore only part of the picture. The ability to employ capital, debt securities and corporate governance structures with an almost infinite level of flexibility is crucial to the success of complex cross-border transactions.

By imposing a Cayman corporate entity at the top of the ownership structure it is possible to employ a level of sophistication that affords shareholders the ability to determine for themselves how business will be conducted.

For example, Cayman companies may issue equity securities with such rights to priority, voting, dividends, redemption, restrictions, preferences, privileges and payment obligations between classes as the parties may determine.

Similarly, equity securities may be issued (including on a convertible basis) with such rights and restrictions as creditors and the company agree on.

### **Local talent**

Directors and officers in Cayman companies can be drawn from anywhere in the world and need not convene or conduct meetings in Cayman. If independent local directors are required for any reason, there is a talented community of professionals whose experience and expertise in relation to complex transaction structures often proves valuable.

Constitutional documents can be drafted with the full suite of pre-emptive, drag/tag and reserved matter protections that one might expect. In the context of an IPO, the takeover protections ordinarily afforded companies in a US context are readily available.

Finally, Cayman law is broad enough to accommodate the requirements of relevant securities law authorities and the listing rules of stock exchanges in relation to governance, transferability of shares and the like. Cayman entities may be admitted to listings on all of the world's key stock exchanges.

Governments in leading international financial centres recognise the importance of such structures, which ensures a high degree of consultation so laws keep pace with the requirements of the industry.

The recent introduction of a statutory merger procedure in Cayman, and the imminent adoption of amendments to the law to permit shareholders to determine in their constitutional documents how such transactions are to be consummated, demonstrate how fluid and responsive the legislative process can be.

It is worth noting that concerns that international financial centres could suffer a degree of regulatory hostility have proven unfounded. Initial suspicions have given way to constructive dialogue and, thanks to the efforts of organisations such as the International Financial Centres Forum and the willingness of onshore governments to consider critically the benefits afforded by efficient means of capital-raising, the focus of concern has shifted to fiscal and regulatory transparency and the management of systemic risk.

While the private acts of private persons remain private, the existence of robust anti-money laundering practices and the signing of tax information exchange agreements with onshore governments have given the regulators in those jurisdictions cause for comfort.

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