This second edition of Mergers & Acquisitions aims to provide an updated first port of call for clients and lawyers to start to appreciate the issues in each jurisdiction. Each chapter is set out in such a way that readers can make quick comparisons between the litigation terrain in each country.
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FOREWORD

Martin Lipton | Wachtell, Lipton, Rosen & Katz

No doubt this publication, which highlights the central M&A features in jurisdictions around the world, will be well worn by dealmakers if 2016 resembles the 2015 global M&A environment. 2015 was a record year for M&A transactions, both in the United States and globally, surpassing $5 trillion. Somewhat less well known is the cross-border nature of a very high percentage of this activity.

While the US accounted for roughly 50% of recent deal volume, cross-border deals played a leading role as well. Indeed, the very largest transactions in recent years have involved acquirors in different jurisdictions – witness the blockbuster ($160 billion) Pfizer–Allergan transaction, or Anheuser-Busch InBev's $130 billion bid for SABMiller plc. One cannot fully appreciate the M&A landscape without global perspective; this is more true today than even a few years ago, when the first edition of this book appeared.

Indeed, it is not just in deal mass that the cross-border influence emerges. Hostile deals likewise know no borders – consider, for example, Dutch Mylan NV’s hostile bid for Irish Perrigo Company plc, which, albeit unsuccessful, also led to Israeli Teva Pharmaceutical’s unsolicited $40 billion bid for Perrigo (also later withdrawn when Teva agreed to acquire a US-based generics business). There can be no doubt that dealmakers in one jurisdiction have become both willing to pursue transformative deals outside their home country and comfortable in diving deeply into the local rules, engaging with local investors and developing innovative deal techniques to gain traction. Of course, legal and financial advisors play a key role in developing this cross-border fluency.

An interesting aspect of the current M&A boom is its persistence in spite of economic headwinds in many key jurisdictions. While economic growth provides an important stimulus to strategic M&A activity, it is worth considering whether the correlation on the downside is as strong. Even during a downturn, industry-specific factors, stockholder activism and the need for cost savings may motivate acquirors even in a negative economic environment. A case in point is the continued heavy pace of acquisitions by Chinese companies, which does not seem to have slowed despite the downturn in the Chinese economy, Renminbi devaluation and volatile local equity markets. In the case of China, deal-making reflects long-term strategic decisions by companies largely immune to short-term pressures. The role of activists in the US M&A market continues to grow. Some of our most well known companies have been influenced by relatively small investments from vocal activists – DuPont, Dow and Yahoo!, to name but a few. Activists continue to push aggressively for transactions, primarily for the expected short-term profits, whether through a spin-off, divisional sale or whole-company transaction. Some of these US-based funds have begun to take their show on the road, occasionally appearing in Europe, for example, and this should be expected to continue. When one considers the large holdings of a relatively small number of institutional investors in many European companies, one can easily see activists coalescing with these investors to exert substantial pressure on management for short-term deal-making, particularly in jurisdictions where management and the board have a limited ability to implement takeover defences once they are under attack. Companies would be well advised to assess their vulnerability to this line of attack.

Another certainty is the ability of activists to invent new lines of attack. Consider the partnership between Pershing Square and Valeant in the failed hostile bid for Allergan. Other activists have been willing on occasion to directly make overbids when dissatisfied with deal terms, or to solicit competitive bids from third parties. In hostile situations,
activists who have invested in the bidder have even been known to make “investor presentations” publicly to the target’s shareholders, encouraging them to pressure management to come to the table.

While traditional private equity transactions in recent years have been largely overwhelmed by corporate deal-making, private capital continues to find creative transactions and to be global in reach. Savvy private capital investors have found new solutions to close deals, such as the innovative cash and tracking-stock structure used by Dell and Silver Lake to acquire EMC Corporation. 3G Capital and Berkshire Hathaway have become models for the relationship between corporate management and stable private equity capital.

In the United States, financing private equity deals has become more challenging due to the Federal Reserve’s leveraged lending guidelines, but large alternative non-bank financing sources almost immediately emerged to fill this gap, albeit sometimes on more onerous terms. The last few years have seen periods of tremendous uncertainty in the high-yield market. While interest rates have generally been at historical lows, it has become apparent that not all private equity deals are treated equally by lenders. On the other hand, the convergence of lending practices and terms in the US and European debt markets has given issuers, both private equity and corporate, a further route to successful financing. The corporate debt environment has closely tracked the corporate M&A tempo, with several record-breaking M&A financings by corporate issuers being heavily oversubscribed.

While dealmakers have been busy, so too have regulators and other constituencies. One important lesson that emerges is the absolute necessity to carefully and fully develop the regulatory, political and local benefits for a deal prior to announcement. Competition authorities worldwide have become more sophisticated in analysing the competitive impact of a transaction, and also entirely willing to scuttle large cross-border deals (such as the Tokyo Electron–Applied Materials transaction), but experience demonstrates that even deals that are difficult from a competitive standpoint can get done (such as the Holcim–Lafarge merger). The views of works councils, trade unions and local politicians require especially careful consideration in the context of a cross-border deal, where the perception of “exiting a country” may lead to legal and practical hurdles to a smooth closing.

In the United States, inversion transactions are not just the subject of regulatory scrutiny, but have also become a feature of the presidential election debate. Political candidates have been heard to criticise as unpatriotic large cross-border inversion deals that result in billions in savings to the parties due to lower global tax rates. Lacking congressional consensus, the Treasury Department has developed ever more nuanced regulations to impede these deals. And at least one large transaction, the $55 billion AbbVie–Shire plc merger, was abandoned when the Treasury Department altered the rules in the interlocutory period.

Reviewing the recent years in M&A, it is difficult to predict yet another boom year ahead. Geopolitical conflicts span the globe, oil prices continue to decline, markets have become even more volatile and important economies show macro-financial vulnerabilities. These factors will hamper confidence, a key ingredient in any M&A deal, but just as surely opportunities will also emerge. We look forward to further engagement with our international friends and colleagues in this shared endeavour.
1. MARKET OVERVIEW

1.1 Please give a brief overview of the public M&A market in your jurisdiction

The increasingly common use of Cayman Islands companies in acquisition and IPO structures has led to an exponential increase in the number of public M&A transactions that employ the mechanisms provided by Cayman law for the acquisition of Cayman Islands companies.

There are two principal corporate vehicles to which these transactions relate:

• Exempted companies, which are companies incorporated with limited liability in the English common law tradition.

• Exempted limited liability companies (LLCs), introduced in Cayman in the first quarter of 2016 and modelled very closely on the Delaware LLC.

This chapter will refer principally to such entities, noting any differences as they arise.

The three methods for acquiring a target company incorporated in the Cayman Islands are:

• A scheme of arrangement pursuant to section 86 of the Cayman Islands Companies Law (as amended) or section 42 of the Limited Liability Companies Law, 2016 (a “scheme”).

• A tender offer to acquire 100% of the issued and outstanding shares in the capital of the target (a “tender offer”).

• A statutory merger pursuant to section 233 of the Cayman Islands Companies Law (as amended) or section 46 of the Limited Liability Companies Law, 2016 (a “merger”).

Each of these methods can be used to acquire the target company for cash or in exchange for an offer of securities, or a combination of both forms of consideration.

In the vast majority of instances, public transactions in respect of Cayman companies will involve the integration of the non-Cayman securities laws of the jurisdiction in which the company is listed or its shareholders are located (and the rules of any relevant exchange) and Cayman corporate law.

1.2 What are the main laws and regulations which govern the conduct of public M&A activity in your jurisdiction?

Relevant Cayman laws

The Cayman Islands laws principally relevant to the conduct of public M&A are the Cayman Islands Companies Law (as amended) (Companies Law), the Limited Liability Companies Law, 2016 (LLC Law) and the common law.

In a small number of cases, one or more of the parties may be subject to regulatory oversight in the Cayman Islands because it has a banking, insurance or similar licence, and specific provisions in relation to change of control will be relevant. In the extremely unlikely event that the target has a listing on the Cayman Islands Stock Exchange (CSX),
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the Cayman Islands Code on Takeovers and Mergers and Rules Governing the Substantial Acquisitions of Shares (the Code) will apply.

Companies Law

Schemes of arrangement

Schemes of arrangement are permitted by section 86, read with section 87, of the Companies Law. Similar provisions in relation to LLCs are set out in sections 42 and 43 of the LLC Law.

The established practice of the Grand Court on applications under section 86 is substantially the same as the equivalent English practice and procedure. The Cayman practice and procedure can be found in the Grand Court Rules applicable in the Cayman Islands at Order 102 (rule 21) and in Practice Direction No 1/2002.

Mergers

The merger and consolidation provisions for companies under Cayman Islands law are set out in sections 232–239A of the Companies Law. Similar provisions for LLCs are set out in sections 45–53 of the LLC Law.

Tender offers

Section 88 of the Companies Law permits a successful offeror to squeeze out the minority shareholders in certain circumstances, as is described more fully below under the heading “Alternative squeeze-out by merger” in Section 10.3. Similar provisions for LLCs are set out in section 44 of the LLC Law.

Common law

Where there is no decided Cayman Islands authority on a particular point, the authorities of courts in the Commonwealth (and England in particular), though not technically binding, would be regarded as persuasive in the courts of the Cayman Islands. It would be very unusual if the Cayman Islands’ courts were not to follow the English authorities on a particular point in circumstances where no relevant Cayman Islands authority existed unless there were a divergence (including, without limitation, where there is specific statutory provision relevant to a particular point) between the two jurisdictions.

Legislation providing for schemes of arrangement is common to the applicable legislation of most common law jurisdictions and, as a consequence, a significant body of common law has been developed in this regard.

In recent times, much of the development of the common law in relation to schemes of arrangement has taken place in matters before the Cayman Islands’ courts, but decisions of the common law courts outside of the Cayman Islands are invariably followed where there is no Cayman Islands authority on point.

There are a number of key areas that have slowed the development of the common law:

- Following the adoption of the Companies Act 2006 in the United Kingdom, which includes the codification of directors’ duties and gives legislative effect to the City Code on Mergers and Takeovers, the development of the common law in relation to public M&A has slowed considerably.
- The UK Companies Act does not have an equivalent regime to the Cayman statutory merger. As the legislation was only recently introduced in the Cayman Islands, there is little or no precedent upon which to rely for the
application and interpretation of that law. Whether they do so expressly or not, it is possible that the Cayman
courts have indicated that they will look to jurisdictions such as Delaware in the US (upon the law of which
state the Cayman merger provisions are based) and Canada for guidance on some aspects of the law.

• That the Cayman courts will look to comparable jurisdictions with a settled equivalent statute and a comparable
legal tradition is of particular comfort to parties pursuing transactions involving the newly introduced LLC,
which does not exist in other common law jurisdictions.

The Code
Pursuant to section 11(2) of The Cayman Islands Stock Exchange Company Law (as amended), the Code ensures
fair and equal treatment of all shareholders in relation to takeovers. The Code also provides an orderly framework
within which takeovers are conducted. The Code is not concerned with the financial or commercial advantages or
disadvantages of a takeover, which are matters for the company and its shareholders. Those who do not conduct
themselves in accordance with the provisions of the Code may be sanctioned and may find that the facilities of the
CSX markets are withdrawn.

Public offering of securities
The offering of securities to the public in the Cayman Islands is governed by the Securities Investment Business Law
(as amended).

Entities to which Cayman law applies
Mergers
• Cayman companies.

Mergers may be consummated by Cayman companies only where they are limited by shares, and are not segregated
portfolio companies.

• Cayman LLCs.

Cayman LLCs may merge with Cayman companies, and vice versa.

• Overseas companies.

An “overseas company” under the Companies Law is any company, body corporate or corporate entity existing
under the laws of a jurisdiction outside the Cayman Islands. The requirement that a company be limited by shares
does not apply in this instance.

Provided that the merger is permitted by, or is not contrary to, the laws of the jurisdiction of incorporation of the
overseas company, Cayman Islands companies may merge or consolidate with overseas companies where either a
Cayman Islands company or an overseas company will be the surviving entity.

Schemes
• Cayman companies.

All companies incorporated in the Cayman Islands are subject to the jurisdiction of the Cayman Grand Court in
relation to schemes of arrangement.
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- Overseas companies.

Section 86 of the Companies Law includes in its application any company liable to be wound up under the Companies Law. Those companies over which the court has jurisdiction to make a winding-up order are listed in section 91 of the Companies Law and include, in particular, foreign companies registered as such in the Cayman Islands under Part IX of the Companies Law. The Cayman Grand Court has therefore held that, where a petitioning company is so registered, the court has jurisdiction to consider a proposed scheme of arrangement in respect of that company.

- Tender offers.

The statutory provisions in relation to the squeeze-out of minority shareholders apply only to companies incorporated in the Cayman Islands.

- The Code.

The Code applies only to companies, other than open-ended mutual funds, listed on the CSX.

- Public offering of securities.

The rules relating to the public offering of securities to the “public” in the Cayman Islands relate to any offering by any person of securities, whether on a private placement basis or otherwise. Exempted companies, exempted limited liability companies, exempted limited partnerships and exempted trusts (the main vehicles employed by investors who use Cayman Islands vehicles) are excluded from the meaning of the “public” in the Cayman Islands. Also excluded from the application of the rules are regulated persons, sophisticated persons and high-net-worth individuals.

Cayman regulatory bodies

Mergers

The documentation to effect a statutory merger is required to be filed with the Cayman Islands Registrar, who must be satisfied as to compliance with the relevant provisions of the relevant statute prior to issuing a certificate of merger or consolidation.

Schemes

Schemes of arrangement are subject to the supervision of the Grand Court of the Cayman Islands. The leave of the court is required to convene the relevant meetings of shareholders and/or creditors, and the sanction of the court is required to approve the scheme once the requisite approvals have been obtained at such meetings.

Listed entities

The application of the Code is administered by the Council Executive, which is appointed by the Cayman Islands Stock Exchange Authority from time to time.

Public offering of securities

The application of the Securities Investment Business Law in the Cayman Islands is administered by the Cayman Islands Monetary Authority (CIMA).
1.3 Other than in relation to competition, are there other applicable regulations such as exchange and investment controls?

There are no foreign exchange controls or foreign exchange regulations under the laws of the Cayman Islands.

1.4 Do the main laws and regulations governing the conduct of public M&A facilitate or hinder such activity in your jurisdiction?

Both the drafting of Cayman legislation (which involves significant input from practitioners on-Island) and the interpretation and application of such legislation are focused on facilitating the efficient consummation of such transactions in a business-friendly manner and with the minimum fuss possible.

2. PREPARATION AND PRE-ANNOUNCEMENT

2.1 What are the main structural means of obtaining control of a public company? If there is more than one, what are the key advantages and disadvantages of each route? Is one route more commonly used than others?

Scheme of arrangement

A scheme is a court-supervised procedure which would result in the acquisition of either all or none of the outstanding shares of the classes to which it relates.

Consent

A scheme requires:

• The approval of a majority in number representing three-quarters in value of the members of each class who attend and vote in person or vote by proxy at meetings of the holders of each class.

• The sanction of the Grand Court of the Cayman Islands.

Procedure

The procedure for a scheme of arrangement is as follows:

• The parties draft the explanatory statement and other documents described under the heading “Scheme of arrangement” in Section 4.3.

• The target company issues a petition at court to commence the court proceeding and to seek sanction for the scheme. The target company issues an ex parte summons at court for leave to convene meetings of shareholders, supported by affidavits from the target company and the offeror.

• The explanatory statement, meeting notice and proxy forms are considered by the court at the initial hearing.

• If approved by the court, a meeting of shareholders is convened and held.

• If approved by shareholders, a further affidavit is presented to the court.

• The parties attend the hearing of the petition and submit the scheme for sanction of the court. In exercising its discretion, the court will satisfy itself that:
• all the statutory requirements have been satisfied;
• the scheme’s terms are such that an intelligent and honest person, a member of the class concerned and acting in respect of their interest, might reasonably approve; and
• those parties present at the various class meetings were voting in accordance with their interests as a class.
• Upon the granting of the orders copies must be lodged with the Registrar of Companies within seven days. Once this has occurred, the scheme is deemed to be effective and to have quasi-statutory effect.

Merger
A statutory merger process was introduced to the Cayman Islands in 2010 and has quickly become the standard means by which the acquisition of public Cayman companies is conducted. As with a scheme, if a merger is approved, then, upon it becoming effective, the offeror will acquire all of the outstanding shares of the classes to which it relates.

Consent threshold
A merger requires the approval of:
• A special resolution of shareholders.
• Any other consent prescribed by the relevant memorandum and articles of association.

The voting requirements for a special resolution itself are determined by reference to the memorandum and articles of association of the relevant company, but typically this will be the consent of the holders of two-thirds of the voting shares who attend and vote at the relevant meeting, provided a quorum is present.

Procedure
The merger procedure is as follows:
• The directors of each constituent company to approve a written plan of merger (a “plan”), usually as an appendix to a broader merger agreement.
• A shareholders’ meeting of the target company is called and copies of the documents described in Section 4.3 are delivered to shareholders.
• Once the constituent companies have obtained the necessary authorisations and consents, the plan is signed by a director of each of the constituent companies and the plan and supporting documents are filed with the Registrar of Companies.
• Upon receipt of the plan, the supporting documents and the prescribed fee, the Registrar will register the plan (including any amended and restated constitutional documents of the surviving company) and issue a certificate of merger.
• The merger may take effect on the date of registration of the plan or, if a particular date is specified in the plan, on the specified date (provided it is within 90 days of the filing).
• The Registrar shall then strike from the register any constituent company that is not the surviving company in a merger or any constituent company that participates in a consolidation.

**Effect of a merger**

Upon the merger taking effect, all rights and property of each of the constituent companies immediately vest in the surviving or consolidated company, which also assumes all of the obligations of the constituent companies. The Companies Law also provides for the continuation of any existing claims, causes and proceedings.

**Dissenting shareholders**

Both the Companies Law and LLC Law contain a mechanism whereby a shareholder of a constituent company which is a Cayman Islands company can seek payment of the fair value of his shares upon dissenting from a merger, though dissention rights are usually only available where the consideration offered is payable in cash.

There is only a very limited amount of jurisprudence on the point, but the Cayman courts have helpfully indicated a willingness to rely on decisions in jurisdictions such as Delaware, where these provisions have been more closely litigated.

**Tender offer**

A tender offer is an offer for the entire issued share capital of the target, which offer may become effective without the offeror acquiring 100% of such shares. Section 88 of the Companies Law permits an offeror who has received acceptances in respect of 90% of the issued and outstanding shares not held by the offeror to acquire the remaining 10% by a compulsory acquisition procedure (a “squeeze-out”). See “Alternative squeeze-out by merger” in Section 10.3. Similar provisions in relation to LLCs are set out in section 44 of the LLC Law.

**Principal points of difference**

From a Cayman perspective, the principal matters for an offeror to consider when selecting an acquisition structure are:

*Securities laws*

Where the consideration offered to the target company’s shareholders comprises securities that would otherwise be required to be registered with the Securities and Exchange Commission in the United States (SEC), a scheme may be a more efficient and cost-effective route. Because a scheme benefits from the opinion of the Cayman Islands court as to fairness, a registration statement in respect of the consideration securities would not ordinarily need to be filed with the SEC.

*Timing and minority shareholdings*

Save in respect of the acquisition of any residual minority interest, the specific timetable for a tender offer will be governed by the applicable US securities laws and applicable listing rules and regulations. It is my understanding, though, that a tender offer would generally be expected to provide the offeror with control of the target (that is, more than 50% of the issued and outstanding shares) more quickly than a scheme owing to the necessity in the latter case to follow court timetables. However, acquiring the shares of the inevitable outstanding minority shareholders means that the offeror will not obtain 100% of the issued and outstanding shares of the target until quite some
later than would have been the case under a scheme. Adopting a parent/subsidiary merger instead of a statutory squeeze-out would eliminate the four-month waiting period.

The timetable for acquiring control of the company in the context of a scheme may be longer than it is in the context of a tender offer, but, once approved by the court and having obtained the requisite number and value of shareholders, the offeror obtains 100% of the issued and outstanding share capital immediately upon the scheme becoming effective. The scheme is therefore a quicker route to acquiring 100% of the target than a tender offer.

The procedures for a statutory merger eliminate the court timetable from the process, so should be the most efficient route to acquiring 100% of the shares of the target. One may have to deal with a run-off period, during which the appraisal rights of dissenting shareholders are addressed, but that does not affect the timing of the effectiveness of the merger itself.

**Ability to block special resolutions**

If, after a tender offer becomes unconditional as to acceptances, the offeror holds less than two-thirds (or such higher threshold as may be prescribed by the target company’s constitutional documents for the adoption of a special resolution) of the issued and outstanding shares in the capital of the target, the remaining minority would be able to block any resolution of the target for which a special resolution of shareholders is required under the Companies Law or pursuant to the target’s constitutional documents. This includes such matters as:

- Consumating any merger.
- Changing the name of the target.
- Altering the memorandum and articles of association of the target.
- Resolving to wind up the target.

**Effectiveness**

Under a tender offer, the offeror is not required by Cayman law to achieve any particular level of acceptances before declaring the offer to be unconditional as to acceptances. Although it would be usual for any offeror not to stipulate a level of acceptances that will be required prior to the offer becoming unconditional in this regard, it should require at least the 90% threshold required for a squeeze-out.

The actual level at which the offeror declares the offer unconditional as to acceptances will depend upon discussions with the target company and the rules prescribed by any relevant exchange upon which the target’s shares are listed. The level of acceptances required to pass a special resolution of the target is often the compromise agreed upon. Because the required threshold for a merger is a special resolution, it places the offeror in a position to effect a two-step process, and by the second step of a merger to acquire the balance of the shares not acquired under the first step of the tender offer.

Under a scheme of arrangement, or if one employs a merger from the outset, then, assuming the requisite level of consent is obtained, the transaction will be effective in acquiring 100% of the shares of the target company on the applicable effective date.
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Flexibility
If a competing offer arises or new information comes to light, then both a tender offer and a merger will afford the offeror greater flexibility to amend the terms of the offer than will a scheme. Under a scheme, if the changes to the terms of the offer are material, then an entirely new scheme would have to be presented to the court and the timetable would be reset.

Public forum
Because the sanction hearing will be in open court, a scheme provides a greater opportunity for public opposition by the shareholders of the target company. The practice adopted by the English courts is one that entitles all of those affected by the terms of a scheme to appear and be heard at the sanction hearing, and it is the practice of Cayman courts to err on the side of caution when considering whether to deny any person the opportunity to be heard.

A tender offer provides no specific public forum, and no meeting of shareholders is required under Cayman law in connection therewith. A merger provides the limited public forum of a shareholders' meeting.

Consent from secured creditors
Under a merger (unless a Cayman Islands court waives the requirement), the consent of each secure creditor must be obtained. Under a scheme, the court will want to be certain that creditors are not adversely affected, but will not otherwise insist on separate consent. Under a tender offer, the consent of creditors will only be relevant if the specific contractual arrangement between the target company and any such creditor requires such consent.

2.2 Outline any secrecy and disclosure obligations placed on bidders and target companies ahead of any formal announcement of a bid
The law primarily relevant to secrecy and disclosure in respect of any bid for any public Cayman Islands company will be governed by the rules of the relevant exchange upon which its securities are listed. In addition, companies listed on the CSX and persons resident in the Cayman Islands are subject to legislation specifically prohibiting the making of misleading markets and engaging in insider trading. The relevant Cayman rules are contained in the Code, the Securities Investment Business Law (as amended) (SIBL) and the Proceeds of Crime Law (as amended).

2.3 The Code
To the extent that any such securities are listed on the CSX, the Code provides that secrecy shall be observed before the announcement of a firm intention to make an offer. All persons privy to confidential information, price-sensitive or otherwise, concerning an offer or contemplated offer shall treat that information as secret. All persons concerned in an offer or contemplated offer shall conduct themselves so as to minimise the chances of an accidental leak of information.

As regards insider dealing as it applies to entities listed on the CSX, organisations involved in takeovers are required by the terms of the Code to take reasonable steps, by the establishment and maintenance of effective procedures, to ensure that its employees do not act upon inside information, either by dealing directly in the underlying securities or improperly disclosing the information to third parties.
2.4 The SIBL

Offences

Under Part IV of the SIBL:

- Any person who creates a false or misleading appearance of active trading in any securities listed on the CSX, or a false or misleading appearance in respect of the market for, or the price of, any such securities, is committing an offence.

- Any individual who has information as an insider is guilty of insider dealing if they deal or encourage another to deal in, or disclose information with respect to, securities listed on the CSX that are price-affected securities in relation to the information.

The prohibition in relation to misleading markets applies to any securities. The prohibition against insider dealing applies to persons located within the Cayman Islands at the relevant time.

“Inside information” must: relate to particular listed securities, to a particular issuer of listed securities or to particular issuers of listed securities; be specific or precise; have not been made public; and be price sensitive.

Securities are “price-affected” or “price-sensitive” only if the information would, if made public, be likely to have a significant effect on the price or value of the listed securities.

Defences

Section 26 of the SIBL describes the defences available to a person charged with insider dealing. In essence, a person will not be guilty of an offence if they acted in good faith without the belief that the information was price-sensitive inside information or, having disclosed the information, without the belief that it would be used for an illegal purpose. There are, in addition, specific defences that relate to market makers and for specific disclosures in the context of a negotiated acquisition of the securities in question.

Penalties

Any person who commits an offence of making a false statement, misleading markets or insider trading commits a criminal offence under the law punishable by a fine of up to $12,500 and to a term of imprisonment of up to seven years.

The Proceeds of Crime Law

The Proceeds of Crime Law (as amended), and the Anti-Money Laundering Regulations published pursuant thereto, criminalise the transmittal of the proceeds of criminal conduct, and require persons resident in the Cayman Islands to report any knowledge or suspicion of any such payments having been made. Under the law, “criminal conduct” is defined as conduct which constitutes an offence in the Cayman Islands, or would have constituted an offence had it been committed in the Islands.
2.5 Are there any constraints over the ability of a bidder to carry out due diligence on the target?

The only information that is publicly available in the Cayman Islands in respect of any target company will be confirmation of the incorporation date, name, registered office address and good standing status.

Naturally, where the target company is listed, the information that has been openly published in respect of that listing will be available from the relevant exchange or applicable regulatory body in the listing jurisdiction.

2.6 Is it possible for a target company to grant a bidder exclusivity and/or a break fee? Are there any other steps which can be taken to provide greater certainty to a bidder that its bid will be successful?

Break fees

It is now common practice to employ break fees in relation to takeovers of public companies incorporated in Commonwealth jurisdictions. The concern that arises in relation to inducement fee arrangements and other deal protection measures is that they act to inhibit, and may preclude directors from recommending, competing offers. There are several issues that the board of a target company should consider before agreeing to pay a break fee.

Ultra vires

An agreement to pay a break fee must not be outside the scope of the target company’s express or implied powers, as set out in its memorandum and articles of association. It is usual for a Cayman company to have objects that are either unrestricted or at least very broad, but it is nonetheless prudent to conduct diligence in this regard. In addition, it is very important that the board adopts resolutions whereby it concludes that the entry into the break fee arrangement is for the commercial benefit of the company and its members as a whole.

Duty to exercise power in good faith

At common law, the directors are required to exercise their power and authority in an informed and independent fashion in what they considered to be good faith in the interests of the company (Re Smith & Fawcett Ltd [1942] Ch 304, CA). Any agreement that conflicts with the duty of good faith, as perceived by the directors, judged by reference to the circumstances at the time when the agreement is entered into, may be unenforceable (Fulham Football Club Ltd v Cabra Estates Plc [1992] BCC 863).

Any decision to agree to a break fee must be predicated on the grounds that the directors believe that the arrangement is likely to promote the success of the target company for the benefit of its members as a whole. It may be legitimate to agree to pay a break fee if that is necessary to induce the offeror to make its offer or to secure a strategic benefit for the target company (such as a reverse break fee). The board of the target company must be able to conclude, and should record in its meeting minutes, that the directors believe on reasonable grounds that the offer would not have been forthcoming in the event that the arrangement were not entered into.

See in addition the commentary at Section 8, in relation to the fettering by the directors of their discretion.
Collateral purpose
An agreement to pay a break fee should not be entered into for a collateral purpose (Hogg v Crampton Ltd [1967] Ch 254). Where the purpose of the break fee is simply to discourage a competing bid, agreeing to its payment in those circumstances would be an improper exercise of the directors’ powers.

Level of the break fee
While the point has not been resolved by a court of relevant jurisdiction, considered wisdom is that a break fee that does not exceed 1% of the value of the offer would not be objectionable.

Exclusivity
The analysis in relation to granting a bidder a period of exclusivity is similar to that in relation to break fees. In summary: the board will have to be in a position to conclude that the offer would not be forthcoming, or would be made on inferior terms, in the event that the target company had not been prepared to offer to the bidder a period of exclusivity.

2.7 Are there any restrictions on a bidder obtaining commitments from a target company’s shareholders ahead of the announcement of a bid?

In the context of both a tender offer and a merger, shares which are the subject of an irrevocable undertaking to accept such offer will normally count towards the 90% threshold needed to squeeze out minorities. Moreover, neither the tender offer nor the merger provisions of the Companies Law deal with persons acting in concert.

Under a scheme, on the other hand, there is a residual concern that an irrevocable undertaking may be sufficient to differentiate the interests of such shareholders from others such that they would form a separate class of shareholders for the purpose of approving the scheme (and consequently be required to vote separately on the matter, not counting towards the majorities necessary for the approval of the scheme by the general body of shareholders). The terms of any irrevocable undertaking given in the context of a scheme would require particular attention and may require a “fiduciary out” in the event of a competitive offer arising (that is, a “soft irrevocable”).

The Cayman Islands Grand Court is likely to exclude from the voting on a scheme any shareholders that it regards as acting in concert with the offeror.

2.8 Are the directors of the target company under any particular obligations or duties in the period leading up to a bid?

The duties that govern the actions of the directors of a target company are not codified, so are set out in the common law as it has been developed in the Commonwealth courts in particular. The abiding general principle is that the directors of a Cayman company owe their duties to the company and not to its shareholders (Percival v Wright [1902] 2 Ch 421). That is ordinarily a distinction without a difference, but it is one that is often thrown into stark relief in the context of takeover proceedings.

However, where a board of directors engages with an offeror, provides information to shareholders and expresses a view as to whether the offer should be accepted, then in those circumstances they assume an additional level of responsibility towards shareholders to act honestly and not to mislead them (Gething v Kilver [1972] 1 WLR 337 at
That duty does not extend to a duty to negotiate the most attractive price for shareholders or to consider whether an alternative sale process may yield a better outcome. It does, however, require that the board disclose to the shareholders information that may affect any decision to accept the bid, such as the existence of an alternative offer. It probably requires that the board provide comparable material information to alternative bidders so as to enable them to put a comparable offer to shareholders. Where a recommendation has been made, it requires that the board revise its recommendation should circumstances arise that materially affect the board’s consideration of the original offer.

In the New Zealand decision of Coleman v Myers [1977] 2 NZLR 297, the court held that an additional level of fiduciary relationship may arise in circumstances where there is a special relationship between the directors of a private company and a small group of shareholders, particularly where the directors have a high degree of inside knowledge. Coleman v Myers has been quoted with approval in the English courts and, whilst it is of limited application to a particular set of facts and does not supersede the general principle in Percival v Wright, it is likely to be of particular relevance to quasi-public companies such as those established for club deals.

3. ANNOUNCEMENT OF A BID

3.1 At what stage does a bid have to be announced?

Where the target company is listed on the CSX, an announcement of a firm intention to make an offer shall be made:

- When the board of the target company has been notified in writing of a firm intention to make an offer from a serious source, irrespective of the attitude of the board to the offer.
- Immediately upon an acquisition of shares which gives rise to an obligation to make a mandatory offer under the Code.

The announcement shall not be delayed while full information is being obtained. Additional information can be the subject of a later supplementary announcement.

3.2 Briefly summarise the information which needs to be announced

The announcement of a firm intention to make an offer for the share of a company listed on the CSX shall contain:

- The terms of the offer.
- The identity of the offeror.
- Details of any existing holding of shares in the target company owned by or subject to an option in favour of the offeror, persons acting in concert with the offeror or persons who have given irrevocable undertakings to accept the offer.
- All material conditions of the offer.
• Details of any arrangement which exists with any offeror, with the target company or with any person acting in concert with the offeror or with the target company in relation to relevant shares, whether or not any dealings have taken place.

3.3 Are statements made in the announcement binding?
The terms of the announcement are binding, though they may be amended.

4. BID TIMETABLE
4.1 Please provide a brief overview of the bid timetable (assuming that the bid is recommended by the board of directors of the target)

Scheme
Once the offer documentation has been settled and has been approved by any relevant regulatory authorities, an initial application is made to court for leave to convene meetings.

It is critical to arrange for a court hearing date well in advance to avoid delays caused by a congested roll.

Once the initial hearing has been conducted, a meeting of shareholders is convened for approximately one month hence.

A return date is reserved for the sanction hearing shortly after the shareholder meeting date, and a court order will be available to be filed with the Registrar immediately thereafter.

Merger
Once the offer documentation has been settled and has been approved by the relevant regulatory authorities, the only timing restrictions are the notice period set forth in the constitutional documents of the target company for the calling of a meeting of shareholders and any period considered necessary to procure proxy support.

4.2 Are there any material differences if the bid is hostile (unsolicited) and/or if there are competing bidders?
If the bid is hostile, then a scheme of arrangement will not be available. If the bid is recommended but competitive, then the limitation on flexibility inherent in the procedure for a scheme means that it would likely be unattractive.

If a hostile or competitive offer proceeds by way of tender offer, then the fact that the offer is not supported by the target board is unlikely to affect the timetable to a significant extent once the offer is launched.

If a hostile offer is preceded by a proxy fight in order to have representatives of the offeror elected to the board of directors of the target company, then the delay to the process of making an offer (whether by scheme or merger) will depend entirely on the ability of the offeror to have persons so elected. Restrictions on the ability of shareholders to convene general meetings, and the imposition of staggered board structures, are common takeover defence mechanisms.
4.3 What are the key documents which the shareholders of a target company would typically receive on a bid?

The documents that investors receive are usually determined by the rules of any relevant exchange upon which the target company’s shares are listed, or by the securities laws of the relevant jurisdiction in which the offer is made. There are additional documents required, depending on the type of bid:

**Scheme of arrangement**

- An explanatory statement, pre-approved by a Cayman court, that explains in plain English the effect of the scheme on all of the various classes, along with the commercial reasons why the scheme is to the benefit of those concerned. The commercial case for the scheme must be put clearly and unambiguously, with justifications (if necessary by reference to relevant financial information on the relevant companies). This document usually doubles as the proxy statement (or local equivalent) required to be delivered pursuant to applicable securities laws.
- Notice of the court meeting, together with a form of proxy.

**Merger**

- There is no Cayman requirement that any form of explanatory document be delivered to shareholders. However, it is usual that a proxy statement (or local equivalent) be required to be delivered pursuant to relevant securities laws.
- A copy of the plan of merger to be authorised.
- Notice of the shareholders’ meeting, together with a form of proxy.

**Tender offer**

- A document setting out the terms and conditions of the offer, in compliance with applicable securities laws, is sent to shareholders, accompanied by a form of acceptance.

5. FUNDING AND CONSIDERATION

5.1 At what stage does a bidder need to have funding in place? Are there any legal or regulatory requirements which the bidder must satisfy to show that its funding is sufficient?

To the extent that any such securities are listed on the CSX, the Code requires that the announcement of a firm intention to make an offer containing a wholly or partial cash consideration shall include confirmation by the financial adviser or by another appropriate third party that resources are available to the offeror sufficient to satisfy full acceptance of the offer. Except with the consent of the Council Executive, the confirming party shall be expected to produce the cash itself if, in giving the confirmation, it acted irresponsibly or failed to take all reasonable steps to assure itself that the cash was available.
5.2 What are the main sources of funding usually obtained by bidders (for example, capital markets/banks/alternative lenders)?

Because Cayman entities are used for transactions throughout the world, funding sources vary depending on the jurisdiction and industry relevant to the particular transaction. That said, leveraged private equity finance is particularly prevalent in offshore acquisition structures.

5.3 Are there any limits on the ability to use assets of the target company to secure a bidder’s funding?

There are no such limits.

5.4 Can the consideration offered by a bidder take any form? Are there any special requirements the bidder must satisfy if the consideration is not in cash? Is a foreign bidder able to offer its shares as consideration for the bid?

Where a company is listed on the CSX, the offer may generally take any form. Offers in cash, or containing a cash alternative, are required:

- In relation to mandatory offers under Part 8 of the Code.
- Under Part 9 of the Code where:
  - the securities of the target company acquired for cash by an offeror or any person acting in concert with it during the offer period, or within three months prior to its commencement, carry 10% or more of the voting rights currently exercisable at a class meeting of that class; or
  - in the view of the Council Executive there are circumstances which render such a course necessary in order to give effect to the general principles of the Code.

6. CONDITIONS

6.1 Can a bid be made subject to the satisfaction of any pre-conditions? If so is there any restriction on the content of any such pre-conditions?

In respect of any company listed on the CSX, save with the consent of the Council Executive, an offer shall not be subject to conditions which depend solely on subjective judgements by the directors of the offeror or the fulfilment of which is in their hands.

6.2 Are there any conditions usually attached to a bid? Other than as a result of law and regulation specific to particular sectors and/or bidders are there any mandatory conditions?

There has never been an announced bid for a company listed on the CSX. In the event that such a bid is made, the Council Executive is likely to be guided by the decisions of the Takeover Panel in administering the City Code on Takeovers and Mergers in the United Kingdom.
6.3 If a condition is not satisfied, can the bidder choose not to proceed with the bid?
Again, there is no precedent in the Cayman Islands, but the Council Executive is likely to be guided by the decisions of the Takeover Panel in administering the City Code on Takeovers and Mergers in the United Kingdom.

7. STAKEBUILDING
7.1 Is a bidder free to buy shares in the target in the period leading up to a bid and subsequently? If so, what are the disclosure requirements?
See Section 2.5.

7.2 Are there any material consequences for the bidder or target if stakebuilding does take place?
See Section 2.5.

7.3 Are there any circumstances in which a bidder could become bound to make a mandatory bid?
See Section 2.5.

8. RECOMMENDED BIDS
8.1 Where a bid is recommended, does the target board require a “fiduciary out” (the ability to withdraw its recommendation)? If so, what is the scope of this right and what are the consequences for the bid?
At common law, directors are required not to enter into transactions that fetter their future discretion (Boulting v ACTT [1963] 2 QB 606). The question therefore arises as to whether, by agreeing to recommend an offer throughout the offer period, or, indeed, agreeing to pay a break fee in the event that the recommendation is altered, the directors would restrict their ability to advise the company’s shareholders as to the merits of a future competing offer. It is consequently typical that any undertaking to recommend an offer contains the ability on the part of the directors to alter their recommendation in circumstances where the terms of a competing offer are such that they consider it necessary or prudent to do so in order to discharge their fiduciary obligations.

9. HOSTILE BIDS
9.1 How can a target company defend against a hostile bid?
The protections generally available to Cayman companies to prevent hostile takeovers are likely to be determined to a significant degree by the rules and conventions that apply to entities listed upon any exchange upon which its shares are listed. Because their structure contains so much flexibility, Cayman companies are able to adapt their constitutional documents to incorporate provisions that investors in a variety of jurisdictions may expect to see.

In particular, in recent years it has become common for public Cayman companies to adopt takeover protections that closely mirror the protections adopted by companies incorporated in Delaware and elsewhere in the United...
States. In the final analysis, these protections act to a greater or lesser extent as a deterrent. There are very few instances, if any, of Cayman companies being subject to protracted hostile bids, and transactions that may start out in that manner are usually concluded with a degree of amicability. That is not to say that target companies have not been adept at exploiting the takeover protections described below to improve their respective bargaining positions.

The most common protections included in the memoranda and articles of public Cayman companies are:

- A prohibition on business combinations with any “interested” shareholder unless: (i) there is advance approval by the board; (ii) the interested shareholder owns at least 85% of the voting shares of the company at the time the business combination commences; or (iii) the combination is approved by at least two-thirds of the voting shares that are not held by the interested shareholder.

- Blank cheque preferred shares.

- A staggered board (where directors are appointed in three separate classes for fixed terms that expire at different times).

- The entrenchment of directors’ appointment providing for removal only for cause or by supermajority vote.

- Prohibition, or at least severe restrictions, on the ability of shareholders to call special meetings and/or to have matters added to meeting agendas.

There are a number of more aggressive provisions that have not often been included in the constitutional documents of Cayman companies. Chief amongst these is the traditional “poison pill” arrangement that permits existing shareholders to subscribe additional shares or to acquire the shares of the offeror, in each case at a discount to their value. For the directors of a Cayman company, the employment of a poison pill mechanism as a defence to a hostile bid poses substantial challenges to the discharge of their fiduciary duties.

10. CONTROL REQUIREMENTS, TREATMENT OF DISSENTING SHAREHOLDERS AND COMPULSORY ACQUISITION OF SHARES

10.1 What are the minimum acceptance thresholds required to obtain control of a target company?

See Section 10.3.

10.2 What protections (if any) do non-accepting shareholders have against a bid becoming successful and/or its terms?

In the context of a scheme, provided the thresholds are satisfied and the court order granted, there is little or no scope for objection by a minority shareholder.

For a tender offer, a minority shareholder may, in certain, very limited, circumstances, allege that the transaction constitutes a fraud on the minority. As regards a merger, a dissenting minority shareholder may not prevent the merger, but may prosecute a claim for fair compensation post-merger. See Section 2.1.
10.3 Briefly describe any compulsory acquisition or “squeeze-out” provisions a bidder may be able to take advantage of to acquire the shares of non-accepting shareholders

Tender offer
Where a tender offer under section 88 of the Companies Law to acquire all of the shares of the target not held by the offeror has, within four months of the making of the offer, been approved by the holders of not less than 90% in value of the shares in the capital of the target, then:

• The offeror may, at any time within two months of the expiration of the said four-month period, give notice to any dissenting shareholder that it shall, subject to the considerations discussed in the list items under the heading “Alternative squeeze-out by merger” below, be entitled and bound to acquire those shares on the terms on which under the contract the shares are to be acquired from approving shareholders. Note that, because of the manner in which the relevant provisions of the Companies Law are drafted, the compulsory offer to acquire the remaining minority cannot be commenced prior to the expiration of the four-month period, even if 90% of the shares are acquired prior to that time.

• A dissenting shareholder may, within one month from the date on which such notice is given, apply to court for an order excluding it from the compulsory acquisition procedure.

• Within one month of the notice being given to dissenting shareholders (if no application has been made to court for an order referred to above, or if an application has been made and an order is pending, following such order being disposed of), the offeror shall transmit a copy of the notice to the target and pay the target (or transfer to the target) the amount in cash or other consideration representing the price for the dissenting shares, and the target shall be bound to reflect the offeror as the holder of the relevant shares.

• The target is then required to hold the consideration in a separate bank account on trust for the various dissenting shareholders.

Similar provisions are contained in the LLC Law.

Alternative squeeze-out by merger
Section 233(7) of the Companies Law provides that a resolution of shareholders shall not be required in circumstances where a parent company seeks to merge with a subsidiary company (that is, a company in which it owns 90% of the issued and outstanding shares). In that event, providing that the remaining requirements for a merger (see below) have been met, once the offeror has acquired 90% of the target it will be able effectively to “squeeze out” the remaining minority shareholders without having to wait out the four-month period prescribed by section 88 of the Companies Law.

The following points should be considered:

• It is not clear in the context of a parent/subsidiary merger whether the provisions relating to appraisal rights described below would apply. It appears that, as a technical matter, they will not; however, it may nonetheless be advisable for an offeror to make such rights available to resist any suggestion by a minority shareholder that in invoking the provisions of section 233(7) of the Companies Law the new parent has sought to commit a fraud on the minority by denying it the dissenting rights that it would otherwise have had.
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11. DE-LISTING
11.1 What are the requirements for de-listing a target company’s shares following a successful bid?

Rule 6.74 of the Listing Rules of the CSX requires that the listed entity advise the Exchange immediately if it becomes aware that the percentage of listed securities which are in the hands of the public or the minimum number of shareholders required by the Rules falls below the level required.

A target company will be required to be de-listed in the event that the shares held by persons who are not substantial shareholders or their affiliates comprise less than 25% of the listed shares (save in circumstances of exceptional liquidity, high volume or wide distribution, and at the discretion of the Exchange) and/or the listed shares are held by fewer than 50 shareholders.

12. TRANSFER TAXES
12.1 Are there any transfer taxes payable on a bid for a target company incorporated in your jurisdiction under the various routes described above?

Save in respect of nominal stamp duty, as described below, there are no transfer taxes, stamp duties, income taxes, withholdings, levies, registration taxes, other duties or similar taxes or charges now imposed, or which under the present laws of the Cayman Islands could in the future become imposed, in connection with the consummation of any M&A transaction or the enforcement or admissibility in evidence of any document or on any payment to be made by the company or any other person pursuant to any document in respect of any M&A transaction. The Cayman Islands currently have no form of income, corporate or capital gains tax and no estate duty, inheritance tax or gift tax.

In the event that any share transfer form relevant to any acquisition of shares were executed in, or delivered in its original form into, the Cayman Islands, such form would attract a nominal stamp duty of $25. In addition, certain types of security instrument and certain notes evidencing indebtedness may be subject to stamp duty in the Cayman Islands. Such duty would not exceed $500 in aggregate in respect of any instrument.

13. EMPLOYEE ISSUES
13.1 Are there any employee notification or consultation requirements on a bid?

There are no provisions under Cayman law requiring that employees be notified of, or consulted with in respect of, any acquisition of a Cayman Islands company.
14. FOREIGN BIDS

14.1 Describe your jurisdiction’s level of cross-border M&A activity (including whether particular countries or regions are more active counterparties than others)

Almost all M&A activity involving Cayman companies is conducted in an international, cross-border environment.

14.2 Are there any laws or regulations or local practice that may raise particular challenges or impediments for foreign bidders?

Cayman Islands law is devised specifically to facilitate informational, cross-border commercial activity.

14.3 Are there any particular legal, regulatory or other requirements applied to foreign bidders that are not generally applied to local bidders?

No.

15. CURRENT TOPICAL ISSUES AND TRENDS

15.1 Please summarise any current issues or trends relating to public M&A activity in your jurisdiction

The M&A marketplace generally

The climate for M&A generally is cautiously favourable. There is significant dry powder capital ready to be invested which, allied with the growth of direct lending credit funds, means that deal making is poised for a good few years. All that is needed in the developed economies is the catalyst of a little market stability. Provided that there is a realistic realignment of expectation between buyers and sellers, particularly in the quasi-public space occupied by private equity funds, we expect an active few years.

The exponential growth in M&A in the emerging markets in Asia and Latin America has slowed considerably. In Asia, we anticipate a period of restructuring and consolidation. In Latin America, the outlook seems challenging, but infrastructure and energy projects continue to attract attention. As ever in challenging markets, there continue to be opportunities for investors with liquidity who are able to identify target companies with strong fundamentals but where the share price has been weakened by macroeconomic factors.

The active Chinese IPO market of recent years has served to increase the number of Cayman companies listed on exchanges around the world significantly, and that has had a consequent effect on the volume of public M&A activity involving Cayman companies. Those companies have been going through the usual cycle of buying, selling and being taken private, and that, considered together with activity in the traditional sectors for Cayman companies (mining and commodities, energy, technology and financial services), the public M&A marketplace involving Cayman offerors and target companies has never been more active. The same is true for strategic buyers as it is for funds looking for take-private opportunities.

The benefit of Cayman entities for public M&A transactions

As the global uplift in M&A activity gathers momentum, there has been a notable increase in interest and appetite for the use of international financial centres such as the Cayman Islands to structure complex transactions efficiently.
Whatever their respective sectors and sizes, investors and directors dealing in the global marketplace have a couple of key points in common. First, their sources of capital, and the companies in which they deploy that capital, are increasingly global and they have to be able to accommodate investors and investment professionals who do not want unwitting exposure to otherwise irrelevant tax and reporting regimes. Secondly, with the absence of historical levels of leverage, investors are looking to invest in more concentrated equity securities; the increasingly prevalent club deals and joint ventures serve as means to hedge that exposure. Accommodating a variety of interests means that deals are of necessity more complex. The panacea for persons tasked with the responsibility of structuring such transactions is a jurisdiction that offers tax neutrality in the first instance, and the ability to structure and manage portfolio companies with multiple investors and multiple layers of debt and equity as efficiently and effectively as possible.

There are, of course, jurisdictions that offer specific positive benefits for tax planners structuring M&A transactions: jurisdictions that afford the benefits of certain specific treaty arrangements. In other instances, the employment of structures formed in jurisdictions in which targets operate is unavoidable.

However, concerns are often expressed that the ability of such jurisdictions to deal with corporate, financial and administrative matters in a manner that is commercially attractive to the parties makes such arrangements frustrating to manage and positively nightmarish to litigate.

For international financial centres such as the Cayman Islands, tax neutrality is therefore only part of the picture. The ability that persons establishing a Cayman company have to employ capital, debt securities and corporate governance structures that afford 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, one makes it possible to employ a level of sophistication that affords shareholders the ability to determine for themselves how business will be conducted. By way of illustration:

- Cayman companies may issue equity securities with such rights as to priority, voting, dividends, redemption, restrictions, preferences, privileges and payment obligations as between the different 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 may agree.
- Directors and officers may be drawn from anywhere in the world and need not convene or conduct meetings in the Cayman Islands.
- If independent local directors are required for any reason, then there is a highly talented community of professionals whose experience and expertise in relation to complex transaction structures often prove invaluable.
- Constitutional documents may 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.
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- Cayman Islands 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, and Cayman entities may be admitted to listing on all of the world’s key stock exchanges.

The importance that the popularity of such structures holds for the economies of international financial centres ensures the willingness of the Cayman Islands’ governments to work with local professionals in the development of attractive financial services products, and the existence of a high degree of consultation between the public and private sectors, means that the law keeps pace with the requirements of investors and creditors alike. The recent introduction of a statutory merger procedure in Cayman and the adoption of the LLC Law in January 2016 – the first such law in a common law jurisdiction – demonstrate how fluid and responsive the legislative process can be.

It is noteworthy that concerns that international financial centres would suffer under a degree of regulatory hostility have proven unfounded. The initial wariness and suspicion have given way to constructive dialogue and, thanks to the efforts of organisations such as the International Financial Centres Forum (www.ifcforum.org) and the willingness of onshore governments to consider critically the benefits afforded by efficient and effective means of capital raising, the focus of concern has shifted towards fiscal and regulatory transparency and the management of systemic risk. Whilst the private acts of private persons remain private, the existence of extremely robust anti-money laundering practices and the signing into effect of tax information exchange agreements with onshore governments has given the regulators in those jurisdictions cause for comfort.