
THE MERGERS & ACQUISITIONS REVIEW

SIXTH EDITION

EDITOR
SIMON ROBINSON

LAW BUSINESS RESEARCH

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THE MERGERS & ACQUISITIONS REVIEW

Sixth Edition

Editor
SIMON ROBINSON

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EDITOR'S PREFACE

Deal-making has remained on the agenda in the past year, although the first half of 2011 showed a stronger performance than the second half, which saw a significant fall in transactional activity. In the wake of continuing economic uncertainty, opportunities for acquisitions remain limited to companies and institutions on a stable financial footing. At the same time, corporates are beginning to focus on their core business and looking for ways to return value. Valuations remain favourably low for purchasers, and the prospect of striking a bargain makes cross-border M&A attractive for those who can afford it. While access to the loan market has remained difficult, cash-rich corporations have begun to swing the balance in their favour. Shareholder participation and a desire for control and accountability are on the rise, and an atmosphere of increased regulation, reform and austerity is building. We remain in a state of geopolitical flux, and these factors continue to complicate the global economic scenario. The period of widespread unrest in the Middle East and North Africa seems to be reaching a settled conclusion, although the situation in Syria (and possibly Mali and Sudan) is still volatile. A number of countries have seen fresh elections and a transition of leadership, including France and Russia, and a change of leadership in China is expected following the 18th National People's Congress this autumn, when the US presidential elections will also take place. The sovereign debt crisis and the ongoing uncertainty over the fate of the eurozone are further contributing to the lack of confidence in the markets.

All is not doom and gloom, however, and whereas the global picture remains difficult, there are signs of hope. The emerging markets have shown a persistent growth in outbound investment, spurred on by a desire to build a more prominent global presence and for the purpose of accessing new markets. European targets remain of interest to both US and Middle and Far-Eastern buyers. Inbound investment from the emerging markets into both Africa and Australia is on the rise, and this has strengthened activity in the energy, mining and utilities sector. The technology, media and telecoms sector has also shown signs of promise with some high-profile deals, and must be watched with interest in the coming year. There is hope that, as political and economic factors

stabilise, M&A activity will once more gather pace and momentum, and enter a new era of resurgence. We shall see.

Once again, I would like to thank the contributors for their continued support in producing this book. As you read the following chapters, one hopes the spectre of the years past will provide a basis for understanding, and the prospect of years to come will bring hope and optimism.

Simon Robinson

Slaughter and May

London

August 2012

Chapter 16

CAYMAN ISLANDS

Wendy L Lee¹

I OVERVIEW OF M&A ACTIVITY

According to a report of the Cayman Islands Economics and Statistics Office, the Islands' economy began to recover from the economic downturn in 2011, with real gross domestic product growing at an estimated annualised rate of 1.1 per cent, compared to a contraction of 3.4 per cent in 2010.² The Cayman Islands also witnessed an 11.1 per cent increase in new company registrations in 2011; 9,066 new companies were incorporated compared to 8,157 a year earlier.³ As of 31 December 2011, there were a total of 92,964 active Cayman companies, not significantly lower than the 93,693 Cayman companies that were active at the end of 2008 (which was the highest number of active Cayman companies recorded on a year-end basis to date).⁴

The latest Global Financial Centres Index ('GFCI 11'), a barometer tracking the shifts of competitiveness in global financial centres, recently ranked the Cayman Islands as the third-highest ranking offshore jurisdiction.⁵ While offshore centres have suffered economic challenges in the past four years, they are reportedly beginning to recover and according to the GFCI 11, the Cayman Islands was the offshore jurisdiction that has improved the most in the six months since the previous GFCI, ranking number 40 in the financial centre rankings overall, up from number 46 in the GFCI 10.⁶

1 Wendy L Lee is a senior attorney at Harney, Westwood & Riegels.

2 The Economics & Statistics Office, The Cayman Islands' Annual Economic Report, May 2012; Amanda Banks, *Tax-News.com*, London, 'Mixed Fortunes For Cayman Finance Industry', 1 March 2012.

3 General Registry of the Cayman Islands statistics.

4 *Id.*

5 GFCI 11, March 2012 at p. 2.

6 *Id.* at p. 4; *CNS Business News*, 'Cayman ups rank in GFCI', 21 March 2012.

However, the Cayman Islands economy is not immune to global economic pressures and it derives a significant amount of its business from the United States. Lingering doubts about the United States' economic recovery, major volatility in the global markets, continuing uncertainty about the stability of the eurozone (particularly the potential contagion of Greece's sovereign debt crisis into Spain and Italy) and reports about a potential slowdown in China's growth has affected M&A deals globally.

In 2011 there were 612 M&A deals⁷ involving Cayman Islands entities, down from 721 completed transactions in 2010, a fall of 15 per cent.⁸ Total deal value for completed M&A transactions involving Cayman Islands entities also fell from US\$45.7 billion in 2010 to US\$44.2 billion in 2011.⁹

In the first quarter of 2012, there were a total of 100 completed Cayman M&A transactions, a significant 46 per cent decline from the 184 deals completed in the same period the previous year and down 29 per cent from the 141 completed deals in the fourth quarter of 2011.¹⁰ Total deal value for completed merger and acquisition transactions involving Cayman Islands entities in the first quarter of 2012 was US\$10.4 billion, a decrease of 23 per cent from the same period in 2011.¹¹ Total deal value for completed Cayman M&A deals was slightly higher in the first quarter of 2012 as compared with the fourth quarter of 2011 but only marginally, by 6 per cent.¹²

This fall in the number of Cayman M&A transactions is not inconsistent with worldwide merger and acquisition statistics for the first quarter of 2012. During the first quarter of 2012, worldwide mergers and acquisition activity fell 21 per cent compared to the same period last year with fewer than 9,000 announced deals.¹³ The value of worldwide M&A totalled US\$481.2 billion during the first quarter of 2012, a decrease of 35 per cent from comparable 2011 levels.¹⁴ As compared with the fourth quarter of 2011, the value of announced worldwide M&A transactions also fell 15 per cent to mark the fourth consecutive quarterly decline in worldwide dealmaking.¹⁵

As a result of ongoing economic uncertainty, a significant amount of M&A transactions involving Cayman Islands companies has involved minority-interest deals as opposed to majority interest or total acquisitions. Of the 612 Cayman Islands-completed M&A deals in 2011, 281 were minority stake transactions.¹⁶ Fifty-two per cent of the

7 Includes acquisitions, IPOs, planned IPOs, institutional buy-outs, joint ventures, management buy-ins, management buy-outs, mergers, demergers, minority stake transactions, share buy backs, private equity and venture capital deals.

8 Zephyr database, published by Bureau van Dijk.

9 Id.

10 Id.

11 Id.

12 Id.

13 Thomson Reuters, Q1 2012 M&A Review, 'Worldwide M&A Down 35%, Slowest Quarter Since 4Q'09'.

14 Id.

15 Id.

16 Zephyr database, published by Bureau van Dijk.

721 Cayman M&A deals completed in 2010 were minority interest acquisitions.¹⁷ Similarly, of the 100 M&A transactions completed in the first quarter of 2012 involving Cayman Islands entities, 50 per cent of them were minority-interest deals.¹⁸

In recent years, Cayman Islands companies have also been more commonly targets in M&A deals rather than acquirers. In 2011, Cayman Islands companies were targets in 381 of 612 completed Cayman M&A transactions.¹⁹ Furthermore, 64 per cent of the completed Cayman M&A deals in the first quarter of 2012 involved Cayman entities as targets.²⁰

Total completed initial public offerings involving Cayman Islands companies were also down in 2011; only 88 Cayman Islands companies went public compared with 106 completed IPOs in 2010.²¹ In the first quarter of 2012, there were 16 completed IPOs involving Cayman Islands companies (not significantly different from the 17 IPOs completed in the first quarter of 2011).²² However, in the spring of 2012, as a result of market volatility, a number of high-profile IPOs involving Cayman companies were withdrawn, including the planned US\$1 billion IPO of high-end luxury jeweller, Graff Diamonds Corporation.²³

While overall, the Cayman Islands economy continues to be dominated by the financial services, banking, and insurance industries, there has been increased Cayman M&A activity in the drilling, mining, extraction and other raw minerals sectors as a result of China's demand for natural resources. M&A activity is also strong in the technology sector particularly among Cayman-incorporated Asian-based companies. Many M&A deals involving Cayman entities are likely to have an Asian component due to economic growth in the Asian markets and the fact that the Cayman Islands continues to be a preferred offshore jurisdiction for Asian-Pacific transactional work.²⁴

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

Mergers, consolidations, amalgamations, schemes of arrangements and takeovers in the Cayman Islands are governed by the Companies Law (2011 Revision) ('the Companies Law'). The Companies Law is substantially derived from the UK Companies Act 1948 and its predecessor, the English Companies Act 1862, and was originally enacted in the Cayman Islands as the Companies Law (Cap. 22, Law 3 of 1961). In addition to Cayman Islands statutes, English common law and equitable principles form part of the substantive law of the Cayman Islands.

17 Id.

18 Id.

19 Id.

20 Id.

21 Id.

22 Id.

23 Id.

24 Id.

Under the Companies Law, a ‘merger’ is defined as the merging of two or more constituent companies and the vesting of their respective undertaking, property and liabilities in the surviving company by operation of law.²⁵ A ‘consolidation’ means the combination of two or more constituent companies into a consolidated company and the vesting of the undertaking, property and liabilities of such companies in the consolidated company.²⁶ Under Cayman law, in a merger, only one of the merging entities survives, whereas in a consolidation, the constituent companies continue on as the consolidated company.

Prior to the introduction of the statutory merger and consolidation regime in the Cayman Islands in 2009, the only procedure available under the Cayman Islands Companies Law to effect a merger or consolidation between companies was a court-approved scheme of arrangement. Pursuant to the provisions of the Companies Law, the Cayman Islands courts had (and continue to have) significant authority to approve acquisitions and corporate restructurings by way of schemes of arrangements, amalgamations and reconstructions.²⁷

Court-approved schemes of arrangements are still available for more complex mergers and consolidations but the new statutory merger and consolidation regime provides a much simpler, more efficient and cost-effective way for both Cayman Islands companies limited by shares, and Cayman Islands companies and foreign companies (other than Cayman Islands segregated portfolio companies) to merge or consolidate, subject to the express provisions to the contrary in the constitutional documents of such companies. Court approval is no longer necessary for contractual mergers and consolidations as they can now be accomplished by shareholder approval and a registration process. Furthermore, shareholder approval is not required if a Cayman parent company²⁸ wishes to merge with its Cayman subsidiary provided that a copy of the plan of merger is given to every shareholder of the subsidiary (unless the shareholder waives the right to receive it).²⁹ This provision of the Companies Law does not apply to Cayman parent-subsidiary consolidations.

In accordance with the provisions of the Companies Law, the directors of each constituent company are required to approve a written plan of merger or consolidation (‘the Plan’) containing matters outlined in the Companies Law (which is submitted for shareholder approval if necessary), as well as file the Plan and certain declarations with the Registrar of Companies in the Cayman Islands (‘the Registrar’).³⁰ The Plan must be approved by special resolution of the shareholders of each merging or consolidating company in addition to any other authorisation specified in the company’s articles of association.³¹ Some or all of the shares whether of different classes or of the same class

25 Section 232 of the Companies Law.

26 *Id.*

27 Sections 86 to 88 of the Companies Law.

28 Under the Companies Law, a ‘parent company’ is one that owns shares representing at least 90 per cent of the votes at a general meeting of its subsidiary (Section 232 of the Companies Law).

29 Section 233(7) of the Companies Law.

30 Section 233(3) and (4) of Companies Law.

31 Section 233(6) of the Companies Law.

in each merging or consolidating company may be converted into or exchanged for different types of property (including the shares, debt obligations or other securities in the surviving company or consolidated company or money or any other property whatsoever, or a combination thereof) as provided for in the Plan.³²

Each holder of a fixed or floating security interest of a company merging or consolidating under Cayman law must also consent to the Plan.³³ Secured creditors may impose certain requirements as a condition for providing consent (i.e., they may ask to be given certain priorities in relation to their security). If a creditor refuses to provide such consent, the applicable constituent company can apply to the Grand Court in the Cayman Islands to have the requirement to obtain such consent waived.³⁴

The Companies Law also sets out takeover provisions relating to the power to acquire shares of dissentient shareholders. In general, under the Companies Law, a shareholder of a Cayman company that dissents from a merger or consolidation is entitled to be paid the fair value of its shares.³⁵ There is a strict notice and objection procedure under the Companies Law resulting in the Grand Court of the Cayman Islands determining the fair value of the shares held by all dissenting shareholders if the value cannot be agreed to between the company and dissenting shareholders.³⁶ Shareholders of a constituent company will not be entitled to exercise dissenters' rights in certain important circumstances including if they hold shares of a company that are listed on a recognised stock exchange or interdealer quotation system; or if the consideration paid for such shareholders' shares will consist of: (1) shares of the surviving or consolidated company; or (2) shares of any other company that are listed on a recognised stock exchange or interdealer quotation system.³⁷

The effective date of a merger or consolidation is the date the Plan is filed with the Registrar or such later date (not to exceed 90 days from the date of filing) as specified in the Plan.³⁸ A certificate of merger or consolidation issued by the Registrar is *prima facie* evidence of compliance with all statutory requirements.³⁹

As soon as the merger or consolidation becomes effective the following will apply:

- a* in the case of a consolidation, the memorandum and articles of association filed with the Plan will immediately become the memorandum and articles of association of the consolidated company;
- b* all rights, property, business, undertakings, goodwill, benefits, immunities and privileges of each of the constituent companies shall immediately vest in the surviving or consolidated company; and

32 Section 233(5) of the Companies Law.

33 Section 233(8) of the Companies Law.

34 *Id.*

35 Section 238 of the Companies Law.

36 *Id.*

37 Section 239 of the Companies Law.

38 Section 234 of the Companies Law.

39 Section 233(12) of the Companies Law.

c subject to any agreements between the applicable parties, the surviving or consolidated company shall be liable for all mortgages, charges, security interests, contracts, obligations, claims, debts and liabilities of each of the constituent companies.⁴⁰

A Cayman company is not statutorily prohibited from providing financial assistance with respect to the acquisition of its own shares. Accordingly, in such circumstances, a Cayman company may provide financial assistance if the board of directors of the company, in discharging its fiduciary duties and acting in good faith, concludes that the provision of such financial assistance is for a proper purpose and in the best interests of the company.

In addition to the Companies Law, M&A involving Cayman Islands licensed companies will require compliance with industry-specific legislation (i.e., the Banks and Trust Companies Law, Insurance Law and Mutual Funds Law) including, in certain circumstances, obtaining the prior approval of the Cayman Islands Monetary Authority ('CIMA'). Regardless of the merger provisions in the Companies Law, CIMA has the authority to ensure that a licensed Cayman company complies at all times with its obligations under the Islands' regulatory laws.⁴¹

Companies listed on the Cayman Islands Stock Exchange are regulated by the Cayman Islands Stock Exchange Listing Rules and the Code on Takeovers and Mergers and Rules Governing Substantial Acquisitions of Shares.

An acquisition, merger or consolidation will also involve directors' duties under Cayman common law. Recent case law involving Cayman Islands-based investment funds have turned the spotlight on directors' duties and in particular, the discharge and application of such duties. In August 2011, the Grand Court in the Cayman Islands found in *Weaving Macro Fixed Income Fund Limited (In liquidation) v. Stefan Peterson & Hans Ekstrom*⁴² that the independent directors of a Cayman investment fund were guilty of wilful neglect and default because they failed to discharge their duties as directors and were ordered to pay damages of US\$111 million plus costs. While the judgment does not create any new directors' duties, the court held that: (1) directors owe fiduciary duties to their companies to act bona fide in the best interests of the company; (2) directors have a duty to exercise reasonable care, skill and diligence; (3) while directors may delegate to external advisers to assist them, they must take an active role in supervising those they delegate to; and (4) they must apply their independent judgement and minds to the decisions they make, as well as to the documents which they are asked to review and execute. While *Weaving* was decided in the context of the hedge fund industry, the principles established in the case are instructive in relation to director duties under Cayman law generally.

Corporate governance was also the focus in the matter of Olympus Corp. In November 2011, it was revealed that the Japanese camera maker paid almost US\$1 billion in

40 Section 236(1) of the Companies Law.

41 Section 233(2) of the Companies Law.

42 An appeal of the August 2011 decision was recently concluded in April 2012, and a decision of the Cayman Islands appeal court is expected in July 2012.

inflated fees to investment advisers on acquisitions in order to hide losses dating back to the 1990s. While decision-making by Olympus's management largely occurred in Japan and London, money was channelled through Cayman entities. The Cayman Islands has been mentioned often in press accounts about this case; however, fund managers and strategists have actually pointed to the outmoded corporate governance model in Japan as the real reason for the scandal in the hope that this will prompt Japan's publicly traded companies to improve self-regulation, corporate governance and responsiveness to investors.⁴³

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

In response to worldwide economic changes, global regulatory requirements and in order to best address the needs of international business, over the past year, legislation in the Cayman Islands has continued to evolve. In April 2011, the Cayman Islands enacted a further set of amendments to its Companies Law. Some of those that relate to M&A are discussed in further detail below.

i Mergers and consolidations

A Cayman Islands company can merge or consolidate with a foreign company (a company not incorporated in the Cayman Islands) provided that the applicable laws and constitutional documents of the foreign company permit such a merger or consolidation and following the recent amendments, the surviving or consolidated company can now also be a foreign company.⁴⁴

The authorisation requirements for mergers and consolidations were also simplified so that the Plan need only be approved by special resolution of the shareholders of each constituent company and any other authorisation specified in the company's articles of association.⁴⁵ A special resolution must be passed by a majority of at least two-thirds (or such higher percentage as may be specified in the company's articles of association) of voting shareholders, either voting in person or, where proxies are allowed, by proxy at a general meeting or by unanimous written resolution executed by all shareholders entitled to vote.⁴⁶ In contrast, Cayman schemes of arrangements require approval by a majority in number representing 75 per cent in value of affected members or class of members (or creditors or class of creditors), as the case may be, who attend and vote in person or by proxy at a court-sanctioned meeting of the members (or creditors) or of each applicable class.⁴⁷

The recent amendments to the Companies Law also provide a Cayman Islands company with increased flexibility to establish different voting thresholds for the passing

43 Tomoko Yamazaki, Shingo Kawamoto and Komaki Ito, *Bloomberg News*, 'Olympus's Possible Delisting Means "Japan Way" No Longer Acceptable Excuse', 10 November 2011.

44 Section 237(7) of the Companies Law.

45 Section 233(6) of the Companies Law.

46 Section 60 of the Companies Law.

47 Section 86(2) of the Companies Law.

of special resolutions at shareholder meetings with respect to different matters (subject to the majority of two-thirds minimum).⁴⁸ For example, a company may now specify that the majority required to pass a special resolution to wind up the company by voluntary liquidation may be higher than that required to approve a merger or consolidation.

Recent changes to the Companies Law state that where the merger or consolidation involves a foreign company, a director of the Cayman Islands company must, in addition to meeting the other requirements of the Companies Law, give a declaration or affidavit with respect to the foreign company including, without limitation, satisfying the Registrar that the merger or consolidation is permitted by the constitutional documents and the jurisdiction of incorporation of the foreign company and that the foreign company is not being wound up.⁴⁹ Such declaration must be made by the director having made due enquiry and any such director will now be deemed to have made such due enquiry if he or she obtains a declaration from a director of the foreign company confirming the same matters.⁵⁰

Where the surviving or consolidated company is to be a foreign company, such company must file with the Registrar an undertaking that it will promptly pay dissenting shareholders of a Cayman constituent company the amount, if any, they are entitled to receive under the dissenters' rights provisions of the Companies Law along with evidence of the merger or consolidation from the jurisdiction of the surviving or consolidated foreign company.⁵¹

If the Cayman Islands company is not the surviving entity, the Registrar will strike off the Cayman Islands company and shall immediately publish in the Cayman Islands Gazette a Government Notice to the effect that the company in question has been struck off the register, the date on which it has been struck off and the reason for its removal.⁵²

The new amendments to the Companies Law requires that any merging or consolidating company that is not the surviving company retire from any fiduciary office held by it no later than immediately prior to the effective time of the merger or consolidation.⁵³

ii Treasury shares

While it is still not possible for a Cayman company to issue shares directly into treasury, as a result of the 2011 amendments to the Companies Law, provided there is no prohibition in the company's articles of association and the memorandum and articles of association of the company are complied with, upon a repurchase, redemption or surrender of shares, Cayman companies can now decide whether to cancel those shares so that they form part of the authorised but unissued share capital (as was the case prior to the recent Companies Law amendments), or hold them as treasury shares and resell

48 Section 60 of the Companies Law.

49 Section 237(7) of the Companies Law.

50 Section 237(8) of the Companies Law.

51 Section 237(10) of the Companies Law.

52 Sections 236(3) and 158 of the Companies Law.

53 Section 233(9)(f) of the Companies Law.

them at a later date (including for no consideration or at a discount to par value).⁵⁴ A Cayman company will not be entitled to receive distributions or exercise any voting rights in relation to treasury shares that it holds.⁵⁵

iii Redemption, repurchase and surrender of shares

Amendments to the Companies Law relating to the redemption, repurchase and surrender of shares provide a Cayman exempted company more flexibility to manage its share capital, as well as assist with group restructurings. The term 'fully paid' and 'paid up' with respect to a share has been redefined as the payment of par value of a share without the inclusion of any share premium.⁵⁶ Therefore, the redemption or repurchase of shares will now be possible if only the nominal (par) value of such shares have been paid.

Shares originally issued as non-redeemable can now be converted into redeemable shares and a Cayman company's articles of association or a shareholders' resolution can authorise the directors of a Cayman company to determine the manner or terms upon which any redemption or purchase will be made.⁵⁷ Subject to the provisions of the company's articles, a Cayman company can now also surrender fully paid shares for no consideration.⁵⁸ Upon surrender, the relevant shares will be cancelled unless they are held as treasury shares.⁵⁹ The new Companies Law amendments also set out the way a redemption or purchase of shares should be treated on a Cayman company's balance sheet. For example, shares may be redeemed and accounted for out of a Cayman company's profits, out of its share premium account or out of the proceeds of a fresh issue of shares.⁶⁰

iv Branch registers

The 2011 Companies Law amendments permit Cayman exempted companies to maintain in any country or territory one or more branch registers of such category or categories of shareholders it may determine.⁶¹ The new provisions of the Companies Law also permits the company's principal register of members to be kept in a different jurisdiction than its branch registers, provided that a duplicate copy of all branch registers is kept at the place where the principal register is located within 21 days of establishing a branch register or within 21 days of making a change in the details recorded in a branch register.⁶² These provisions may be particularly helpful to those Cayman exempted companies that have multiple classes of shares or shareholders, or are located in multiple jurisdictions.

54 Section 37A of the Companies Law.

55 Section 37A(7) of the Companies Law.

56 Section 2(4) of the Companies Law.

57 Section 37 of the Companies Law.

58 Section 37B of the Companies Law.

59 *Id.*

60 Section 37(5) of the Companies Law.

61 Section 40A of the Companies Law.

62 Section 40A(5) of the Companies Law.

v Paperless share transfers

Amendments to the Companies Law now permit, if authorised by a company's articles of association or by shareholder resolution, paperless share transfers and electronic share registers for Cayman companies listed on certain approved foreign stock exchanges.⁶³ These changes not only facilitate the listing of shares of Cayman companies globally but will make it easier to acquire the shares of listed Cayman companies (i.e., effectuate share transfers) without having to use physical share transfer forms.

vi Execution of documents

Practical difficulties arose as a result of the English *Mercury* case (a persuasive authority in the Cayman Islands), which called into question the validity of documents where separate signature pages were pre-signed, sent or transmitted by e-mail or fax and then later attached to agreements or contracts. New amendments to the Companies Law provide that contracts or other documents (including deeds and instruments under seal) may be executed in any manner consented to by the parties including the pre-signing of separate signature pages to the contract or document even if the contract or document is not in final form without affecting its validity.⁶⁴ The new provisions also validate any execution by this method that took place prior to the passing of the new amendments.⁶⁵

Companies can also now appoint a person to execute a document as a deed or under seal on behalf of the company without the instrument appointing the person itself having to be a deed or instrument under seal.⁶⁶

vii Names in foreign script

The Companies Law was recently amended to permit company names in foreign script. This means that a Cayman Islands exempted company will be permitted to adopt a 'dual foreign name' in a foreign script (i.e., Chinese name) which is not necessarily a direct translation or transliteration of its English name.⁶⁷ This element has proved popular with Asian markets.

viii Takeovers

New amendments to the Companies Law have been welcomed particularly in relation to takeovers of Cayman Islands companies listed on various exchanges around the world. A number of listed Cayman Islands companies have recently 'gone private' using the statutory merger provisions.

The introduction of the statutory merger provisions under the Companies Law may result in the use of the merger provisions as a faster and less costly alternative to the statutory squeeze out provisions under the Companies Law. Under Section 88 of the

63 Section 40B of the Companies Law.

64 Section 81(8) of the Companies Law.

65 Section 81(9) of the Companies Law.

66 Section 83 of the Companies Law.

67 Definition of 'dual foreign name' in Section 2(1) and Section 31(1) of the Companies Law.

Companies Law, if 90 per cent in value of shareholders have agreed to sell, an acquirer can make a compulsory acquisition ('squeeze out') of the minority after a 4 month waiting period from the initial date of the offer. Dissenting shareholders have one month from the date that they have been notified that their shares will be compulsorily acquired to apply to the Grand Court of the Cayman Islands to provide reasons why the shares should not be purchased. The new merger regime provides an alternative route whereby a Cayman Islands bidder could acquire 90 per cent of the shares in the Cayman Islands target company and then merge with the target by way of 'parent/subsidiary merger' without having to undergo a waiting period or obtain shareholder approval.

ix Liquidations

The Companies Law statutory merger provisions could also be used as an alternative solution to liquidation. Instead of formally liquidating a subsidiary that is no longer being used or needed, the Cayman Islands subsidiary could merge with its Cayman Islands parent company thereby transferring any remaining assets and liabilities of the subsidiary to the parent and terminating the existence of the subsidiary.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

Cayman companies do business all over the world. Cayman exempted companies, while resident in Cayman, must carry on business outside of the Cayman Islands. While significant M&A deals involving Cayman companies continue to originate from the United States and Europe, a substantial amount of current Cayman Islands-related M&A activity involves emerging markets.

The popularity of Cayman Islands entities to parties located in emerging markets can be attributed to a number of factors including the ease of incorporation, the fact that the Cayman Islands is a British overseas territory and common law jurisdiction with its foundation in English law, the flexibility of Cayman corporate structures including the ability to reduce capital, distribute capital and issue different classes of shares, and the fact that the Cayman Islands is a major banking centre and has a highly developed professional infrastructure.

i Asia

A large number of the most significant M&A transactions involving Cayman entities in 2011 and early 2012 involved Asia and this trend is expected to continue. Of the 1,326 companies listed on the Main Board of the Hong Kong stock exchange as of 31 December 2011, 758 were Cayman Islands companies.⁶⁸ As a result of continuing economic growth and strong corporate profits, M&A activity in the Asia-Pacific region has rebounded from the 2008 financial crisis. In 2010 the value of M&A deals in the region grew 19 per cent.⁶⁹ Despite such macroeconomic uncertainties as the sovereign

68 Hong Kong Exchanges and Clearing Limited, 2011 Annual Report, Business Review – Major Achievements (2011) and Key Initiatives (2012), p. 50.

69 Satish Shankar, *Forbes*, 'Asia Discovers Its M&A Potential', 9 May 2012.

debt crisis in Europe, deal values continued to rise in the Asia-Pacific region by 6 per cent in 2011⁷⁰ and the region now accounts for about 24 per cent of global M&A.⁷¹ After a slow first quarter in 2012, in April 2012, *The Wall Street Journal* reported that according to Dealogic statistics, M&A volume in the Asia-Pacific region is so far at US\$23.7 billion, the second-highest level on record since 2008⁷² – up 20 per cent on 2011's year-to-date volumes.⁷³ As a result of the significant number of Cayman companies based in China, the Cayman Islands is expected to be part of Asia's increasingly important position over the next two decades as an engine for worldwide growth.

ii Brazil

The Cayman Islands is one of the top five jurisdictions in the world for investment in and out of Brazil, according to 2010 International Monetary Authority statistics. Recent reports also indicate that some US\$67 billion currently flows between the two countries.⁷⁴ Despite an overall economic slowdown, the volume of M&A transactions in Brazil rose in the first half of 2012.⁷⁵ Thomson Reuters recently reported that approximately US\$44.706 billion worth of deals were announced in Brazil in the first half of 2012, up 7.1 per cent from a year earlier.⁷⁶ The number of deals also increased to 417 from 364 in the same period in 2011.⁷⁷ While M&A activity in Latin America involving Cayman Islands entities is currently much lower compared with that occurring in Asia, an increase in M&A activity in Latin America generally and in particular in relation to Brazil is expected to have a spillover effect on the Cayman Islands.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

i Going-private transactions

Statutory Companies Law merger provisions

As a result of the recent changes to the Companies Law, statutory mergers and Cayman companies are now increasingly being used in 'going private' transactions particularly by publicly listed China-based companies. The lower threshold for shareholder approval and removing the need for court approval has been cited as advantages over the traditional Cayman Islands scheme of arrangement. Taking companies private involves cashing-out all or a substantial portion of a company's public shares so that the company becomes eligible to delist and deregister its shares from the relevant stock exchange. Depending on factors specific to the company, going-private transactions involving Cayman Islands

70 Id.

71 Id.

72 *The Wall Street Journal*, 'M&A Heats Up in Southeast Asia', 4 April 2012.

73 Id.

74 *CNS Business News*, 'Cayman boosts Brazil ties', 4 May 2012.

75 *Reuters*, 'Brazil M&A activity seen gaining steam by year's end', 2 July 2012.

76 Id.

77 Id.

companies are often structured as one-step mergers or as tender offers followed by a parent-subsidiary statutory merger.

There were a number of significant 'going-private' transactions in 2011 and early 2012 including the acquisition of Tongjitang Chinese Medical Company by Tonsun International (reportedly the first going-private transaction of an NYSE-listed Chinese company incorporated in the Cayman Islands to be completed under the statutory merger provisions of the Companies Law⁷⁸); the acquisition of Cayman-incorporated and NASDAQ-listed Shanda Interactive Entertainment Limited, one of the largest game and entertainment companies in China, via management buy-out in a transaction worth approximately US\$740 million;⁷⁹ and the acquisition of NASDAQ-listed SMART Modular Technologies Inc, a Cayman Islands company headquartered in California, by Silver Lake Partners and Silver Lake Sumeru in a deal valued at approximately US\$645 million.⁸⁰

Cayman schemes of arrangements

Not all recent going-private transactions have utilised the statutory merger provisions of the Companies Law. Some of the most significant M&A going private transactions in 2011 and early 2012 have been completed as Cayman Islands schemes of arrangements.

In May 2012, Alibaba Group Holding Limited ('Alibaba Group'), a diversified e-commerce company based in China, and Alibaba.com Limited ('Alibaba.com'), both Cayman Islands companies, jointly announced that the proposal for the privatisation of Alibaba.com by way of a scheme of arrangement ('the Scheme') had been approved by its requisite shareholders. The Grand Court of the Cayman Islands later approved the Scheme in June 2012 pursuant to which Alibaba.com became a wholly owned subsidiary of Alibaba Group and shares in Alibaba.com were delisted from the Hong Kong Stock Exchange.⁸¹ Pursuant to the Scheme, Alibaba.com's shareholders received a cancellation price of HK\$13.50 per share in cash in a deal estimated to be US\$2.3 billion.⁸² It has been reported that the privatisation of the Hong Kong-listed flagship company is part of preparations for Alibaba Group's expected initial public offering.⁸³

Cayman-incorporated Alibaba Group was also in the news in 2011 over its spin-off of Alipay, a third-party online payment platform, which has a huge market share in China, to a private company controlled by Jack Ma, founder, chairman and CEO of Alibaba Group. Yahoo! and SoftBank, two material investors in Alibaba Group, claimed that they had not approved the spinoff and only learned of the deal in March 2011 well after it had been completed. The parties later came to an agreement that if Alipay goes

78 *Hong Kong Lawyer*, Law Firm News, June 2011.

79 David Barboza, *Dealbook.NYTimes.com*, 'Shanda Interactive's Shareholders Back Buyout Plan', 15 February 2012.

80 Press Release: SMART Modular Technologies Inc, 26 August 2011

81 *CapitalVue News*, 'Alibaba delists today', 20 June 2012.

82 Press release: Alibaba.com, 'Alibaba.com Shareholders Approve Privatization Proposal', 25 May 2012.

83 Spacemart.com News, 'Shareholders vote to take China's Alibaba unit private', 25 May 2012.

public, Alibaba Group will be paid at least US\$2 billion but no more than US\$6 billion, plus certain licensing fees.⁸⁴ Under the agreement, Alipay has also agreed to maintain its current relationship with the Chinese online retailer Taobao, one of Alibaba Group's top e-commerce companies.⁸⁵ Later in 2011, Yahoo! agreed to sell about half of its 43 per cent interest in Alibaba Group back to the company for at least US\$7.1 billion.⁸⁶ Yahoo! will continue to retain a 23 per cent interest in the company which will reportedly be divested over time.⁸⁷

In July 2011, Nestlé SA agreed to buy 60 per cent of Hsu Fu Chi International Ltd., a Cayman-incorporated Chinese snack and confectionery maker, for US\$1.7 billion.⁸⁸ Nestlé SA successfully acquired a 43.52 per cent shareholding in Hsu Fu Chi by way of a Cayman Islands scheme of arrangement and a further 16.48 per cent shareholding in Hsu Fu Chi from the Hsu brothers (the founders of the company) directly, both with a consideration of S\$4.35 per share.⁸⁹ The Hsu brothers retained a 40 per cent shareholding in Hsu Fu Chi through Hsu International Holdings Limited, a company jointly owned by the Hsu brothers. Hsu Fu Chi was delisted from the Singapore Stock Exchange.⁹⁰ The acquisition was approved by the Ministry of Commerce of China in December 2011 and is significant because it points to a growing willingness on the part of the Chinese government to permit foreign companies to purchase Chinese assets and local brands.⁹¹

ii Significant minority stake transactions

Pricing in volatile markets and the financing of acquisitions continues to be challenging globally. Minority transactions allow sellers to access certain capital markets and permit buyers to take advantage of price volatility and potentially lower company valuations. As mentioned above, a significant number of recent M&A transactions involving Cayman entities have been minority interest deals.

For example, in late 2011, a group of investors, including private-equity firm Silver Lake Partners, Russian venture capital company Digital Sky Technologies, Yunfeng Capital, which includes Alibaba Group chairman Jack Ma as one of its founders, and Singaporean investment fund Temasek Holdings agreed to invest US\$1.6 billion for up to 5 per cent in the Cayman-incorporated company, Alibaba Group. The private equity firms purchased the shares by leading a tender offer for shares of employees, option holders and certain other shareholders of Alibaba Group.⁹²

84 Evelyn M Rusli, *Dealbook.NYTimes.com*, 'Yahoo and Alibaba Resolve Dispute Over Alipay', 29 July 2011.

85 *Id.*

86 *BBC News*, 'Alibaba will buyback half of Yahoo stake for \$7.1bn', 21 May 2012.

87 *Id.*

88 *Bloomberg News*, 'Nestle to Buy 60 per cent Stake in Hsu Fu Chi for \$1.7 Billion', 11 July 2011.

89 *Id.*

90 *Id.*

91 *Want China Times*, 'Nestle's acquisition of Hsu Fu Chi approved', 9 December 2011.

92 Gina Chon, *The Wall Street Journal*, 'Alibaba Gets \$1.6 Billion Investment', 23 September 2011.

Cayman-incorporated Baidu Inc, China's largest search engine and one of Fortune Magazine's fastest growing companies in the world raised US\$300 million in its second round of fundraising for Qiyi.com, the Chinese online video venture majority owned by Baidu.⁹³ Baidu contributed US\$100 million and Legend Holdings Ltd's Hony Capital contributed US\$200 million. It was reportedly the largest private equity deal in the second half of 2011 involving a China-based company.⁹⁴

iii Drilling, mining, energy and resources sector

There were some significant M&A deals involving Cayman Islands drilling, mining, energy and resource companies in 2011 and in the first half of 2012 including the following.

One of the largest mergers involving a Cayman company to be completed in 2011 was the combination of Acergy SA and Cayman-incorporated Subsea 7 Inc to create Subsea 7 SA, a leader in undersea engineering and construction for the oil and gas industry.⁹⁵ The transaction was announced in 2010 but closed on 7 January 2011 and was completed via Cayman court supervised scheme of arrangement. The share exchange transaction was valued at approximately US\$2.5 billion at the time of announcement.⁹⁶

In a deal worth US\$2.45 billion, Asia's largest oil refining and petrochemical enterprise, China Petrochemical Corporation ('China Petrochemical') completed the purchase of Occidental Argentina Exploration & Production Inc, a Cayman subsidiary of Occidental Petroleum Corp in February 2011.⁹⁷ It was the first time China Petrochemical had invested in Argentina's oil and gas industry.⁹⁸

iv Other notable deals

In the largest M&A deal involving a Cayman Islands company to be completed in the first quarter of 2012,⁹⁹ Western Digital Ireland Ltd, a Cayman company acquired Viviti Technologies Ltd, Hitachi Ltd's hard disk drive business in March. Pursuant to the transaction, Hitachi transferred all shares of Viviti to Western Digital for US\$3.9 billion in cash and 25 million shares of Western Digital common stock valued at approximately US\$0.9 billion, for a total value of approximately US\$4.8 billion.¹⁰⁰ The transaction required the approval of regulators in the United States, Europe and China.¹⁰¹

93 Anita Davis, *Asian Venture Capital Journal*, 'Baidu's Qiyi.com to get \$300m from private equity', 18 July 2011.

94 Zephyr Half Year M&A Report, Greater China, H2 2011, p. 8, published by Bureau van Dijk.

95 Zephyr database, published by Bureau van Dijk.

96 *Dealbook*, 'Acergy to Acquire Subsea 7 in \$2.5 Billion Deal', 21 June 2010.

97 *Bloomberg News*, 'Sinopec Agrees to Acquire Occidental's Argentina Unit for \$2.45 Billion', 10 December 2010.

98 Id.

99 Zephyr database, published by Bureau van Dijk.

100 Tom Coughlin, *Forbes*, 'A very long engagement – Western Digital finally acquires Hitachi's HDD Business', 9 March 2012.

101 Id.

There were a number of noteworthy IPOs involving Cayman companies in 2011 including the HK\$11.7 billion IPO of Macau casino operator, MGM China Holdings Limited, on the Hong Kong Stock Exchange;¹⁰² the US\$743 million IPO of Chinese social networking giant, Renren Inc, which took place in the United States on 3 May 2011, and one year later was listed as one of the top 10 IPOs for Internet companies to date;¹⁰³ and aluminium conglomerate's China Hongqiao Group Limited's HK\$6.37 billion IPO on the Main Board of the Hong Kong Stock Exchange in March 2011, which had been postponed earlier in the year as a result of deteriorating market conditions.¹⁰⁴

v Withdrawn transactions

The financial crisis continues to affect transactions involving Cayman Islands companies. Amid volatile and weak global markets and souring investor sentiment towards initial public offerings, in early 2012, a number of planned IPOs involving Cayman Islands companies were withdrawn.

On 31 May 2012, after receiving orders for just half of its proposed US\$1 billion initial public offering, high-end luxury jeweller Graff Diamonds Corporation, a Cayman exempted company, announced that it was postponing its planned IPO on the Hong Kong Stock Exchange.¹⁰⁵ Three China-based Cayman Islands companies¹⁰⁶ also withdrew their planned IPOs in early 2012 including China Yongda Automobiles Services Holdings Ltd, a Cayman company that sells BMWs and Toyotas in China. The company said in May 2012 that it had scrapped its plan to raise up to US\$433 million in an initial public offering in Hong Kong because of deteriorating equity markets.¹⁰⁷

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

There were a total of 233 banks under the supervision of the Cayman Islands Banking Supervision Division at the end of March 2012.¹⁰⁸ According to CIMA, 'the fundamentals of the Cayman Islands banking sector remain sound and the industry in general has been relatively resilient in a very challenging market environment. Banks continue to consolidate and restructure in search of cost efficiencies, and improvements

102 Prudence Ho and Yvonne Lee, *The Wall Street Journal*, 'MGM China IPO Prices at Top of Range', 28 May 2011.

103 *Associated Press*, 'All-time top 10 IPOs for Internet Companies', 15 May 2012.

104 Prudence Ho and Yvonne Lee, *The Wall Street Journal*, 'Hongqiao to Raise Up to \$1.1 Billion in Revived IPO', 14 March 2011.

105 *Wall Street Journal*, 'FOCUS: Graff Diamonds IPO Postponement Dims Allure Of Felda, Formula One IPOs', 31 May 2012; Robert Cookson and Jennifer Hughes in Hong Kong and Ajay Makan in New York, *FT News*, 'Graff Diamonds pulls Hong Kong IPO', 30 May 2012.

106 China Yongda Automobiles Services Holdings Ltd, China Auto Rental Inc and China Putian Food Holding Ltd, as reported in the Zephyr database published by Bureau van Dijk.

107 Yvonne Lee and Prudence Ho, *The Wall Street Journal*, 'Yongda Shelves Hong Kong IPO', 28 May 2012.

108 CIMA Banking Statistics 2012.

in operational risk management and governance'.¹⁰⁹ As of September 2011, total assets of Cayman Islands licensed banks were reported at US\$1.607 trillion down from the same period of the previous year where total assets stood at US\$1.725 trillion.¹¹⁰ Forty of the top 50 banks in the world hold Cayman Islands banking licences.¹¹¹ The Cayman Islands continues to be a tax-neutral platform for international capital flows, over 80 per cent of the more than US\$1 trillion on deposit and booked through the Cayman Islands, represents inter-bank bookings between onshore banks and their Cayman Islands branches or subsidiaries.¹¹²

While it is difficult to quantify exactly how much of the capital flows through Cayman entities is specifically used for Cayman M&A transactions or the exact source of financing for Cayman-related M&A deals, Cayman companies are commonly used by multinational companies for financial management and treasury operation purposes or as special purpose vehicles in order to assist in the execution of new acquisitions or mergers. The 2008 financial crisis created tighter credit markets and a decrease in liquidity in developed countries. However, demand for commodities and services from and by countries like China, Brazil, South Korea and India have helped lift the global economy. Parties in emerging countries have, in particular, used Cayman companies to gain access to liquidity and global markets in order to fund regional trade and job growth in their respective local economies.

While still much lower than 2008 levels, the Cayman Islands are seeing some increased activity in terms of private equity. Cayman Islands private equity funds are often utilised for leveraged buyouts, private investments in public equities, recapitalisations, acquisitions and divestitures. Although exempt Cayman companies are also employed, the most commonly used structure for Cayman private equity funds is the exempted limited partnership ('ELP'). The total amount of new ELPs registered in 2011 increased 22.9 per cent to 1,897 from the 1,543 new ELPs registered in 2010.¹¹³ While higher than those registered in 2009, this is still significantly lower than the 2,188 new ELPs registered in 2008.¹¹⁴ As at the end of June 2012, 1,050 new ELPs had been registered with CIMA, an increase of 12.4 per cent from the 934 new ELPs registered during the same period a year earlier.¹¹⁵

VII EMPLOYMENT LAW

The Cayman Islands Labour Law applies to employees located in the Cayman Islands and is therefore inapplicable to Cayman exempted companies carrying on business outside of Cayman. Pursuant to the Cayman Islands Labour Law, an employee will not be entitled

109 Id.

110 Id.

111 Id.

112 Id.

113 Cayman Islands General Registry Partnership Statistics 2012.

114 Id.

115 Id.

to severance pay if an acquirer of a Cayman-based business offers the employee the same employment he or she had prior to the acquisition.

The Labour (Amendment) Law, 2011 came into force on 15 March 2011. In circumstances where an employee in the Cayman Islands has worked for at least one year of continuous employment with an employer and has been terminated (other than for misconduct or unsatisfactory performance), the employee will be entitled to one week's severance pay for each completed year of employment for the actual number of full years such employee was employed. Previously severance payments were capped at a maximum of 12 weeks' pay. Similarly, the 12-year restriction is no longer applicable to retirement or resignation allowances that are payable to an employee who has worked at least one full year for an employer and who is not entitled to a pension under the Cayman Islands National Pensions Law.

In an effort to attract new businesses and jobs to the Cayman Islands, the Special Economic Zones Law, 2011 ('the SEZ Law') was recently passed by the Cayman Islands legislature. Among other things, the SEZ Law sets out the process of establishing, regulating and administering special economic zones ('SEZs') within the Cayman Islands. SEZ businesses are enterprises that are located within a SEZ in the Cayman Islands but carry on business mainly outside the Islands. SEZ businesses may be entitled to certain benefits including relief from trade licensing requirements and certain customs duties and reduced work permit fees for foreign workers. Like other Cayman companies, they will also not be subject to income, corporate, capital gains or payroll tax in Cayman. The 60 per cent Cayman ownership rule generally applicable to companies carrying on business in the Cayman Islands will also not apply to businesses located in a SEZ. The first SEZ to be established pursuant to the SEZ Law is Cayman Enterprise City, which plans to create campuses dedicated to six sectors: information technology, media, biotechnology, derivatives and commodities trading, outsourcing and academics.

VIII TAX LAW

Presently, the Cayman Islands has no income, corporation, capital gains or any other tax applicable to a Cayman Islands exempted company conducting offshore business, including M&A although documents may be subject to (generally nominal) stamp duty if executed in or brought to the Cayman Islands, or produced before a court of the Cayman Islands. The Cayman Islands also does not operate a withholding tax. Cayman exempted companies can receive a 'tax exemption undertaking' from the Cayman Islands government, exempting them from any future Cayman Islands taxes for a period of up to 30 years. The Cayman Islands government normally grants a 20-year undertaking initially, which is normally renewable for a further 10 years on expiry.

The Cayman Islands is on the Organisation for Economic Cooperation and Development (OECD) 'white list' of jurisdictions that substantially implement international tax standards and, as of February 2012, had signed 27 bilateral tax information exchange agreements ('TIEAs') with other countries. The Cayman Islands signed its first TIEA in 2001 with the United States. TIEAs are aimed at promoting international cooperation in tax matters through the exchange of information in order to assist in the administration and enforcement of tax laws. The Tax Information Authority

also administers bilateral agreements with the 27 EU Member States in relation to the automatic reporting of savings income information, in effect since 2005. The Cayman Islands Tax Information Authority (Amendment) Law, 2008 provides for a parallel ‘unilateral mechanism’ for cooperation in tax matters that can be used in addition to bilateral agreements. In 2011, the Cayman Islands signed TIEAs with the following countries: Spain, China, Argentina, India, Guernsey and Japan.¹¹⁶

The Cayman–Canada TIEA, which was signed in 2010, came into force in June 2011. The Canadian Income Tax Regulations were amended in 2008 to provide countries that had entered into a TIEA with Canada certain favourable tax provisions that had previously only been available to countries with which Canada had concluded a tax treaty. As a consequence of the Canada–Cayman TIEA, the Cayman Islands is now a ‘designated treaty country’ for purposes of Canada’s Income Tax Regulations. As a result of this designation, dividends paid to a Canadian corporation from active business income of a foreign affiliate resident in the Cayman Islands and carrying on business there will be considered exempt surplus and will not be subject to Canadian tax when paid to its Canadian corporate shareholder. In addition, passive forms of income such as interest or royalty payments paid to a Cayman Islands company by a sister company resident and carrying on active business in a third jurisdiction that has entered into a TIEA or a tax treaty with Canada may be paid on a tax-free basis to the Canadian parent as long as the amount is deductible in computing active business income of the sister company. It is anticipated that as a result of the Cayman–Canada TIEA, the Cayman Islands will play a larger role in the international structuring of Canadian companies, which could lead to increased M&A and other transactions between the countries.

Under the Cayman Islands Monetary Authority Law (2008 Revision), CIMA can enter into memoranda of understanding (‘MoU’) with other overseas regulatory authorities to facilitate information exchange and other assistance between CIMA and these other regulatory bodies. CIMA has entered into bilateral and multilateral MoUs and undertakings with regulatory authorities in the United States, Canada, the Caribbean, Central and South America, the United Kingdom, Europe and the Middle East. In March 2012, the Cayman Islands entered into a MoU with the US Securities and Exchange Commission and in 2011 it entered into MoUs with the Dubai Financial Services Authority, National Banking and Securities Commission of the United Mexican States and the Turks and Caicos Islands Financial Services Commission.

IX COMPETITION LAW

In the Cayman Islands, the Information and Communications Technology Authority Law has some provisions designed to prevent anti-competitive practices, but there is no specific antitrust legislation governing commerce. Therefore antitrust concerns involving M&A related to Cayman Islands entities are typically addressed by the legal or regulatory requirements of the relevant onshore jurisdiction.

¹¹⁶ Ministry of Finance Fact Sheet, The Cayman Islands International Cooperation Regime, February 2012.

X OUTLOOK

While the Cayman Islands economy is showing some signs of recovery after the 2008 financial crisis (on a macro level, gross domestic product is expected to grow about 1.8 per cent in 2012),¹¹⁷ the Cayman M&A market and economy are substantially affected by worldwide economic developments. Recovery continues to be slow in the United States, which has been weighed down by unemployment and consumer indebtedness. Europe faces numerous challenges including the possible breakup of the eurozone, which has rattled investors globally in recent months, triggering not only a sell-off in global equities and a jump in the bond yields of eurozone governments but a decline in the value of the euro. China's growth is also expected to contract in 2012. Global tax and regulatory policies that could permit taxes to be imposed in certain circumstances on foreign companies may also affect the way Cayman entities are used in the future.

If Cayman is to continue to position itself as a leading international finance centre, particularly with respect to M&A in emerging markets, it will be critical that it adopt a flexible and pragmatic approach to global and regional business and continue to adapt its legislation and business practices to meet the needs of both developed and emerging markets.

117 Patrick Brendel, *The Cayman Islands Journal*, 'Cayman economic outlook stable for 2012–2013', 7 March 2012; Michael Klein, *Caymanian Compass*, 'Cayman economy returned to growth', 4 July 2012.

Appendix 1

ABOUT THE AUTHORS

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Wendy L Lee is a senior attorney in Harneys' corporate and commercial department. Her practice focuses on mergers and acquisitions, securities, cross-border transactions, corporate governance matters, insurance law, private equity transactions and corporate restructurings. Ms Lee received a bachelor of journalism degree combined with political science from Carleton University in Ottawa and a JD from Osgoode Hall Law School in Toronto. Prior to joining Harneys, Ms Lee was vice president and assistant general counsel at Allied World Assurance Company AG, a large publicly held insurance/reinsurance company in Bermuda with over US\$8 billion in assets.

Before moving offshore, Ms Lee was a dedicated US securities and mergers and acquisitions attorney at Cooley LLP in Silicon Valley, where she specialised in complex mergers and acquisitions, IPOs and private equity deals for a wide range of clients including technology companies. She also worked at Torys LLP in Toronto where she had a general corporate law practice. Ms Lee is qualified to practise law in the Cayman Islands, Bermuda, Ontario, Canada and California.

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