This is the full version of a Keynote Speech delivered on 26 March 2025 by The Chief Justice, The Hon. Justice Margaret Ramsay-Hale, at the inaugural Offshore Disputes Week held at the Indigo Hotel in the Cayman Islands

CAYMAN: A MODERN, PROGRESSIVE, VIBRANT JURISDICTION WITH A RICH COMMON LAW HISTORY

Introduction

1. I start by expressing my thanks to the Conference organisers for the invitation to be with you here today. I congratulate them to on bringing together delegates from such diverse backgrounds. The conference programme is very impressive for its breadth. I trust that you have all enjoyed the Conference offerings so far and have been able to see a little bit of Cayman and experience *Caymankindness.*

2. As this is the first of what I hope will be many conferences hosted in the Cayman Islands, I have chosen to spend the time I have sharing, with this very international audience, a little bit about our islands, the development of our legal system, our Grand Court, the establishment of the Financial Services Division ("the FSD"), our insolvency work - as that is the majority of the work we do in the FSD including our new restructuring regime - and, as far as time permits, mention a few significant cases which may be of interest or value to you in your practices, wherever you practice, given that most of our work is cross-border work, with parallel proceedings in other jurisdictions being a common feature.

Cayman Legal History

3. The common law of England was introduced to the Islands upon settlement, under the rule of settlement which provides that *"British subjects who settle abroad in a territory not within the jurisdiction of any civilized power take English law with them."* The English law taken by settlers includes the statute law in force at the time of settlement, subject to its applicability at the date of reception. The requirement that the law be applicable before it can be received is set out in **Blackstone's Commentaries**[1] which states that,

   Such colonists carry with them only so much of English law as is applicable to the condition of an infant colony: such for instance as the general rules of inheritance and protection for personal injuries" but not *"…the artificial requirements and distinctions incident to the property of a great and commercial people…"*

[1] 1 Bl Comm

4. The question of whether or not a statute was applicable to the condition of the infant Cayman colony was considered in the 1985 case of *Balbao Atlántico S.A. v Registrar of Lands,* [1985] CILR 304, in which a Panama company appealed against the refusal of the Registrar of Lands to register it as the proprietor of certain lands on the ground that it was not a Cayman registered company. One of the issues that arose for resolution was whether any of the **Statutes of Mortmain** enacted before 1728, which precluded companies from purchasing land, applied within the Islands. These arcane statutes were designed to prevent the Church and corporations from owning land as they never died and would therefore hold the land in perpetuity. The then Chief Justice Summerfield held[2] that they did not, as they arose out of circumstances peculiar to England and do not apply elsewhere unless local statutes otherwise assume and that, at common law, an *"alien company"* has power to hold land in these Islands.

5. Unlike statutes, for which applicability is fixed at the date of settlement, the common law develops by the practice of the courts.

6. Settlement of a territory can be effected in different ways including, relevantly, occupation under the authorization of the Crown or an unauthorized settlement followed by recognition by the Crown.

7. There is some academic debate as to the relevant date of settlement in the Cayman Islands. According to the one view, the date of settlement was the date on which two soldiers from Oliver Cromwell's army came to Cayman from Jamaica. The year was 1658 and the names of the soldiers were Walter and Bowden. Although the records are not voluminous, one 19th century observer, [3] stated that it was a well-established fact that Walter and Bowden were the first settlers, stating that it

   "….plainly accounts for the numerous families of Watlers and Boddens throughout the Islands, the difference of the names only arising from some ignorant persons crossing the L in Walter instead of the T and spelling Bodden with two D's instead of one. Be that as it may, Walter and Bowden came here for the purpose of catching turtles."[4]

8. The alternative view which has been advanced by legal scholars is that the date of settlement for the purpose of the reception of the common law should be 1734. That was the year when the first land grants were made by the Crown through the Governor of

[2] At page 307
[3] Nathaniel Glover American Vice-Consul in George Town in 1831/2
[4] Elizabeth Davies **The Legal System of the Cayman Islands** at page 17

Jamaica, demonstrating that the Crown had assumed territorial dominion over Grand Cayman by that date. The latest date for the reception of English statute law, on this view, would be 1734 when settlement was authorised.

9. It is not just a question of historical interest. It has legal implications. The question of when the law of England was received was considered in case of *Levy v Administrator of the Cayman Islands* 1952 -1979 CILR. Duffus, acting President of the Court of Appeal, appeared to judicially recognize 1658 as the date of reception of English common, stating that *"the persons who settled in the Cayman Islands must be deemed to have taken with them … the common law of England when they first settled here in the early 17th century."*[5] The 17th century ran from 1601 to 1700. That 1658 is the correct date for the reception of English law is supported by the analysis of Elizabeth Davies, one of the few modern scholars of Cayman's legal history**,** who considers that, in the circumstances where the 1734 land grants recognized persons who were already living here, the better view was that that the territory was acquired at the earlier date by way of unauthorized settlement which was subsequently recognized by the Crown.[6]

10. The date of settlement arose again in the *Quayumand Six Others v Hexagon Trust Company (Cayman Islands) Limited* [2002] CILR 161, in which Smellie CJ, as he then was, considered whether the common law offences of maintenance and champerty - where a third-party pays some or all of the litigation costs in return for a share of the proceeds - formed part of our law, in determining the legality of a conditional fee agreement into which the plaintiffs proposed to enter, in order to advance their claim to recover assets of which they were defrauded by their employer, BCCI. He adopted 1734 as the relevant date.

11. In so doing, he followed the decision of Graham J in *Warren v Immigration Board* who held that the preferred date of settlement was 1734 and that the **English Bill of Rights 1689** therefore formed part of the law of the Cayman Islands. This was a very important decision which determined the legality of a moratorium on status grants the government.

12. Despite these decisions and the recency of them, it seems to me that there is still uncertainty as to the appropriate date of settlement given the decision in *Levy,* and statement of the law as set out in **Halsbury's Laws of England** that,

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5 Page 46

6 Davies page 22 *" …having regard to the historical factors relating to Walter, Bowden and other immigrants …and also to the fact that the land conferred in 1734 was conferred upon persons who **'hath transported themselves to the islands'** it might be more accurate to consider that the acquisition of the territory was by way of unauthorized settlement subsequently recognized by the Crown."*

"…. the classification of every colony into one or other of the two classes [settled or conquered] is one of law and once made by practice or judicial decision will not be disturbed by historical research." [7]

13. If the date of settlement were indeed 1658, then the Judge in the *Warren* matter could not have concluded that the Bill of Rights of 1689 was received law and that case, which determined the rights of scores of applicants for Cayman status, would have been decided very differently.

14. Because of the peculiarities of reception of English law by settlement, there is always the possibility that some arcane ancient English statute is still applicable today because it has been overlooked and not specifically repealed or replaced by the local legislature. Who would have expected in 1985 to be met with a plea of **Mortmain** in an application to register land?

15. There may be ancient statutes applicable even in the commercial sphere. Asif J of the Grand Court, as Counsel in private practice, was asked as late as 2021 to advise in Jamaica whether the **Statute of Elizabeth** - the **Fraudulent Conveyances Act 1571** - was still the law. This is the statute which prohibited transfers intended to defraud creditors and was the law of Cayman until it was replaced by the 1990 **Fraudulent Dispositions Law.**

16. In the event you were wondering why I have embarked upon this history lesson, I was inspired do so, not only because our history is interesting and little known and perhaps even less understood, but also because my brother Mr Justice David Doyle, in the recent decision of *In Re HQP Corporation Limited (in Official Liquidation)* 2023 (2) CILR 203 explored the doctrine of precedent - which is at "the core of the common law" see *Broad Idea Ltd . v Convoy Collateral Ltd*. [2021] UKPC 24 at [67] - to determine whether the eponymous *Rule in Houldsworth,* established in the 1880 decision of the House of Lords in *Houldsworth v City of Glasgow Bank*[8] formed part of our law.

17. In the course of his decision, he referred to the case of *Levy v The Administrator* and that set me on my present path. Doyle's judgment contains a wide-ranging survey of the doctrine of *stare decisis.* It is on appeal as to the decision, but I think the learned Judge's exposition of the law may survive the appeal.

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7 4th ed., vol.6, para 1017 at 472. See footnote page 23 Davies

8 *Houldsworth v City of Glasgow Bank* (**1880**) **5 App Cas 317**.

18. The common law rule which is the subject of the dispute is quite turgid and will be of little interest to many of you as it no longer applies in England, where it has been abrogated by statute, and is unknown to practitioners from non-common law jurisdictions, but it is still of some importance here.

19. Briefly, Doyle J declined to follow the *Rule in Houldsworth* and held that claims for misrepresentation by shareholders should rank as ordinary non shareholder claims. Descending into some of the detail, Doyle J held that shareholders who subscribed for shares in a Cayman company were permitted to prove in the liquidation for misrepresentation claims and that such claims will rank as unsecured debts of the company ahead of redemption and other members' claims. Commentators have described the decision not to follow *Houldsworth* as a *"bold decision.*"

20. Segal J, although agreeing with Doyle's observations on the effect of foreign judgments in Cayman law, took a different approach in *Direct Lending* (FSD unreported judgment 13 March 2024). Segal J found that the *Rule in Houldsworth* did apply in Cayman law and that shareholders may not make a claim for misrepresentation in a liquidation, where such claim would compete with creditor claims. Segal J also respectfully disagreed with Doyle J as to the ranking of such claims, finding that a misrepresentation claim could not be a creditor claim but would instead be subordinate and rank as a shareholder claim. Some commentators have described as *"controversial"* Segal J's finding that a misrepresentation claim would rank *pari passu* with any redemption creditor claim, thereby displacing the previously held belief that a redemption creditor reigned supreme in the shareholder rankings.

21. The Cayman Islands Court of Appeal heard appeals in both cases in November 2024 and judgment is expected shortly. That judgment should inject much needed appellate clarity and certainty into this important area of the law and perhaps also determine the circumstances in which the Cayman courts can decline to follow English judgments, which is a topic of great relevance to us all in Cayman and other small island jurisdictions that are English common law based.

22. As an aside, I note that the Law Report details that 72 cases were cited, yet the Judge still managed to record in his judgment at [2] that,

"it was a pleasure and privilege to be subjected to the considerable written and oral advocacy skills of [the parties' legal representatives]" and to thank them *" for the good, helpful and constructive spirit within which the hearing was conducted."*

23. I'm never so effusive in praise when I've been *subjected to* considerable written and oral advocacy. It is no wonder that Doyle J is a favorite of the local Bar!

A History of the Courts

24. Cayman's legal history and the history of the Courts merge. The earliest Cayman courts were courts of summary jurisdiction presided over by a magistrate. The first Chief Magistrate to serve on Grand Cayman was one William Cartwright who served from 1750 to 1775.[9] The first Clerk of Courts was appointed in 1811.

25. When the first legislative body was established in 1831, the Magistrates sat as the Upper Chamber and approved the laws passed by the Vestrymen who were the elected members. A bicameral legislature was thus created which made laws for the Islands, without any express authority from the Crown until 1863 when an **Act for the Government of the Cayman Islands Act** was passed in England. That Act made Cayman formally a dependency of Jamaica.

26. After the passing of the Act, the local magistrates continued to hear summary matters but the Supreme Court of Jamaica was vested with the jurisdiction to hear any legal action that could not be tried in the Islands. In 1894, the **Cayman Islands Administration of Justice Law** (Jamaica, cap. 421) was passed. This Law regulated the operations of the Grand Court and made provisions for the Cayman Islands Commissioner - the local administrative officer - to preside over the Grand Court. For all cases except in cases of treason and capital felony which were tried by visiting judges from Jamaica, he was the Judge of the Grand Court up until 1957. There was still no separation of powers as the administrative and judicial powers being exercised by the same person.

27. In 1957, a separate judicial appointment of a Stipendiary Magistrate was made but that person also held an appointment as an official member of the Executive Council and of the Legislative Assembly. It was not until the appointment of an Attorney General in 1967, who replaced the Magistrate on the Executive Council and in the Legislative Assembly, that a modern separation of the Judiciary from the Executive and Legislative branches was achieved.[10]

[9] See the broad survey of Cayman's history in Elizabeth Davies **The Legal System of the Cayman Islands** Chapter 2
[10] *Op cit*

28. By amendment to legislation in 1964, the Stipendiary Magistrate was transformed into an Acting Judge of the Grand Court, with serious cases and appeals still being decided by the Jamaica Judiciary.[11]

29. The current Court was established as a superior court of record by statute in 1975 and a Judge of the Grand Court appointed. The Cayman Islands Court of Appeal was established by statute in 1984, replacing the Jamaica Court of Appeal. Thereafter, all judicial proceedings could be heard within the Cayman Islands, subject to a possible final appeal to the Privy Council in London.

Cayman's Economic History

30. So the Grand Court as it is presently constituted is a fairly new creature, but one which has developed rapidly and now operates at a high degree of sophistication, having been driven by the market to adapt. That market, which is the Cayman Financial Services industry, plays a critical role in shaping the Cayman Islands' economy and has driven our economic growth since the 1970's. The framework of our modern financial center was actually laid in the 1960's, some early legal practitioners working with the Government to draft and enact legislation to take advantage of the absence of any form of direct taxation.

31. Although lazy critics have suggested that Cayman and all offshore financial centers generally, are *"treasure islands" engaged in money laundering, drug trafficking, and broader tax evasion"*[12] and that transactions in these offshore financial centers "*are not only free from the regulation of the country in which the bank resides, but are subject to no mandatory regulations whatsoever,"* [13] the fact is that Cayman has repeatedly been recognized as having complied with the highest international standards. In an article published in the Arizona State Law Journal 2013 by academics Tony Freyer and Andrew Morriss, they noted that,

"The Economist Intelligence Unit ("EIU") published a series of reports on offshore jurisdictions between 1972 and 2002 that showed how Cayman exemplified efforts by Offshore Financial Centres to compete regionally and globally for economic growth through promotion of high value financial products. Although the EIU reports conceded that these growth strategies - as with some strategies used by onshore jurisdictions -

[11] Introductory Note Cayman Islands Law Reports 1952 -1979
[12] Nicholas Shaxson **Treasure Islands: Tax Havens and the Men who Stole the World**
[13] Ronen Palan, Offshore in OFCs and Tax Havens in **Offshore Finance Centers And Tax Havens: The Rise Of Global Capital** 18, 21 (Mark P. Hampton & Jason Abbott, eds. 1999)

sometimes involved illegal practices or political corruption, they noted that Cayman and other Offshore Financial Centres pursued development and competitive advantage through effective regulation that was often consistent with global best practices.": Creating Cayman as an Offshore Financial Center: Structure and Strategy since 1960.

32. Despite continued criticism from some areas,[14] black and gray lists of any kind are firmly behind us[15] and we are justly proud of what we have achieved as a territory, and as a Court. The fact is simply this: Cayman's tax neutrality and its well-regulated and sophisticated legal system rooted in English common law has made it an integral part of the international finance system.

33. The success of our financial services sector is reflected in two key metrics. We are a leading jurisdiction for alternative investment funds (which includes hedge funds as well as private equity, venture capital and hybrid funds). As regards net asset values, the latest edition of CIMA's Investment Funds Review, published in early 2024, cites **$8.267 trillion** as the total net asset value managed by Cayman Islands domiciled funds at the end of 2023. As at the date of publication of the Investment Funds Review, the total number of funds registered with CIMA stood at 29,353. For reference, the most up to date figures available on the CIMA website record **30,150** funds, as of Q4 2024. Consequently, a lot of our work is investment fund-related disputes.

34. In addition, 58% of all companies listed on the Hong Kong stock exchange are incorporated in the Cayman islands. The majority of these companies have their primary operations in the People's Republic of China. The use of Cayman-incorporated vehicles for investments into Asia is not confined to listed companies and extends equally to private companies.

35. As these vehicles are used to raise debt, we see a number of creditor-related disputes. In 2021, 68% of the creditor winding-up petitions filed in the Cayman Islands concerned companies or funds with their primary operations in Asia, predominantly in the PRC.

	Hong Kong (HKEX)	Singapore (SGX)	New York (NYSE)	New York (Nasdaq)	Taiwan (TWSE)	London (LSE)
Total Number of Companies	2,650	696	2,271	3,312	1,019	1,660
Total Number of Cayman Incorp.co's	1,549	12	80	391	86	13

[14] "*The OECD… and their backlists are the modern heirs of Joseph McCarthy…*" Andrew P Morriss IFC Review 22 August 2019

[15] Cayman was removed from the FATF "Grey List" in October 2023 and from the EU AML list in February 2024

Percentage of Cayman Incorp. Companies	58%	2%	4%	12%	8%	1%

A Court for its Time: The Establishment of the Financial Services Division

36. If you Google it, you will find the success of Cayman's financial services being attributed to Cayman's sound regulatory regime, its political and economic stability and tax neutral platform supported by highly skilled and experienced service providers, all of which is true. But what is often left unsaid is that it is also due in no small part to the Judiciary. This should be no surprise as the impact of the efficiency and independence of the Judicial system in attracting foreign direct investment is well researched.

37. Cayman's status as a leading financial services jurisdiction means that many complex, high value cross-jurisdictional proceedings come before the Court. The FSD was established to provide specialist Judges to ensure the efficient and effective disposal of these disputes. It continues to be an important contributor to the economy of the Islands, maintaining the high regard for the quality of justice in the Cayman Islands necessary to encourage foreign investors to continue to see the Cayman Islands as the first stop for company and fund incorporations. Borrowing from an article published by one of our law firms (I don't have the immediate reference to mind) people choose to invest here with and through entities incorporated in the Cayman Islands, and to enter into contractual agreements governed by the laws of the Cayman Islands with Cayman jurisdiction clauses, in the knowledge that any disputes which arise will be resolved by the Cayman courts with the Judicial Committee of the Privy Council in London as the final court of appeal.

38. The important role of our Judiciary in this regard was highlighted by Lord Reed, President of the UK Supreme Court, in a meeting of the House of Lords Constitution Committee, who observed that the Cayman economy,

"is based on international legal and financial services. The prosperity and way of life of the people there depend on their success in attracting enterprises from … all over the world to set up their businesses there. For that to be a feasible operation, they have to have high-quality courts to deal with disputes, because colossal amounts of money are being invested. " and noted that *" the Cayman Islands has very good first instance judges…"*[16]

[16] Evidence of Lord Reed before the Constitution Committee of the House of Lords on 4 July 2023

39. I should note that Lord Reed was in fact referring to the Privy Council when he spoke to the need for *"high-quality courts"* and defending the PC's continued engagement with the territories, not least because our appeal to that body is constitutionally guaranteed. But he did express the Privy Council's own interest in doing the work, noting that the disputes arising from Cayman and other overseas territories are very often those that raise the most important questions of law and are just as important worldwide as the ones that decided by the English Supreme Court.

40. By way of illustration, Lord Reed pointed to the Cayman case of *Primeo Fund (in liquidation)* - one of 900 actions brought worldwide relating to the Bernard Madoff Ponzi scheme[17] - which he said raised very important questions of law of general importance in England and the other common law jurisdictions, one of which was the question of whether contributory negligence is a defence in contract, an issue which had never gone beyond the High Court in England and Wales.

Insolvency and Restructuring

41. Given the profile of our financial services sector, most of the work we see are large-scale cross-border insolvency and restructuring proceedings involving those Hong Kong listed companies I mentioned that operate in China, as well as fund-related disputes, like *Primeo.*

42. The hallmark of Cayman's insolvency and restructuring regime is its flexibility and its pro-creditor approach which is supported by the commitment of the Cayman bench to co-operate with other Courts and to lend our process in support of foreign main proceedings.

Winding Up

43. There have been many judicial pronouncements for communication and co-operation between courts in different jurisdictions for the efficient conduct of cross-border insolvency cases, "*leading to a maximisation of the value of a company in financial difficulties for the benefit of all stakeholders."*[18]

44. Our court has demonstrated our commitment to co-operation with other jurisdictions and has implemented other mechanisms to facilitate such co-operation, including Parallel Proceedings Coordination. In cases where legal proceedings are taking place simultaneously in multiple jurisdictions, our Companies Winding Up Rules make it the

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17 https://cloudnine.com/ediscoverydaily/electronic-discovery/ediscovery-trends-madoff-ponzi-scheme-case documents-may-be-turned-over-to-edata-rooms-and-special-m/-

18 Vos MR introducing the **Guidelines on Court-to-Court Communication and Co-Operation In Cross-Border Insolvency Cases**

duty of the Cayman Islands liquidator to consider whether it is appropriate to enter into a protocol with a foreign officeholder.

45. The Grand Court's Practice Direction No. 1 of 2018 approved the **American Law Institute/ International Insolvency Institute** Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (the ALI/III Guidelines) as well as the **Judicial Insolvency Network** Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters (the JIN Guidelines). These provide a modern framework for the efficient conduct of insolvency proceedings which involve the courts of more than one country.

46. The first court-to-court communications protocol on cross-border restructuring was approved by the Cayman Grand Court in *Re LATAM Finance Ltd.* (Unrep**.** 24 August 2020). The LATAM Airlines group, the largest airline carrier in Latin America, filed US Chapter 11 bankruptcy proceedings in May 2020, seeking to effect a restructuring. At the same time, and as part of the same restructuring efforts, the Grand Court of the Cayman Islands appointed Joint Provisional Liquidators with 'light touch' powers over three related companies, including LATAM Finance. There were also proceedings in Colombia and Chile.

47. The application to the Grand Court to approve certain cross-border court-to-court communications protocols, subject to the approval of the same by each of the United States Bankruptcy Court for the Southern District of New York, the 2nd Civil Court of Santiago, Chile and the Superintendencies de Sociedad's in Colombia, was granted by Kawaley J citing comity and the soft law instruments which the Guidelines represent.

Exempted Limited Partnerships

48. I have noted that most of our work comes from fund disputes. The winding up regime which is applicable to exempted limited partnerships (ELPS) is of interest.

49. I'll say a few words on ELP's for those who are not familiar with them - unlikely in this room. They are a popular choice for investment fund and private equity structures in the Cayman Islands. The ELP is essentially a creature of contract and is formed by the signing of a limited partnership agreement (LPA) by the general partner and by at least one limited partner. The general partner manages the business, holds the assets of the ELP on trust for its parties and has unlimited liability for the ELP's debts and obligations, and limited partners who do not manage the business and have limited liability. A general partner of an ELP must act at all times in good faith and, subject to any express provisions of the LPA to the contrary, in the interests of the ELP. It is not a company with its own legal

personality which can own assets in its own right. Any rights or property of every description of an ELP shall be held or deemed to be held by the general partner upon trust as an asset of the ELP in accordance with the terms of the partnership agreement.

50. The question of the rights and remedies of investors and creditors have been considered in a recent decisions of the Court. *In the matter of Padma Fund LP*, (unreported, 8 October 2021) Parker J held that the winding up regime applicable to ELPs including the statutory gateway by which a limited partner can petition to wind up an ELP by presenting a winding up petition against the general partner. In so deciding, Parker J overturned years of precedent on the ground that the cases that decided otherwise were *per incuriam*.

51. *In Re Formation (Cayman) Fund I, L.P* (Unrep 21 April 2022) Kawaley J, whose earlier decision Parker J had declined to follow, held that a limited partner may petition to wind up an exempted limited partnership (ELP) on the just and equitable ground by presenting a petition against the ELP directly (rather than against the general partner), and said further that an ELP may be wound-up in the same manner as a company pursuant to Part V of the **Companies Act**.

52. So again we have two different decisions coming out of the Grand Court which can only be resolved by an appellate court. It is not enough, it seems to me, to distinguish the cases on the basis that one was concerned with a creditor's petition and the other with a partner petition on the just and equitable basis, particularly as both Judges expressed views on the availability of winding up proceedings against an ELP generally.

53. I would stress that disagreements between Judges is not a cause for alarm. It illustrates, to my mind, that the Judges are not only independent of the State but also independent of each other. Though bound by the doctrine of precedent to follow the decisions of courts of concurrent jurisdiction, Judges are entitled to disagree. I think it is healthy and allows for the development of the law.

54. I also mention Doyle J's decision in *Aquapoint L.P. v Xiaohu Fan* (13 June 2022) where he held that the GP's conduct entitled the Petitioner to wind up the ELP on just and equitable grounds, a decision which was upheld in the Court of Appeal.

55. What is interesting about this matter is not the decision so much as Field JA's observation that the litigation was conducted on the basis that the English and Welsh and Commonwealth jurisprudence (including decisions of the Privy Council) was applicable to petitions to wind up, on just and equitable grounds, a Cayman Islands ELP - *the new kid*

on the block- notwithstanding the marked differences between an ELP and a partnership governed by the **Partnership Act** and a company incorporated under the **Companies Act.** The learned Judge of Appeal said he would have anticipated a *"further and in the alternative"* case that the expression "just and equitable" in the **Exempted Limited Partnership Act** was to be construed in an expansive and flexible way, taking full account of the special nature of an ELP and less account of the overseas jurisprudence, which points to an opportunity to develop the common law of Cayman.

Provisional Liquidation

56. Of particular interest in our insolvency regime is the appointment of provisional liquidators (PLs) on presentation of the winding up petition for the purpose of corporate rescue.

57. Its usefulness as a tool for corporate restructuring is illustrated by the case of *In re LDK Solar*[19] which was a complex restructuring scheme which had to be implemented in in other jurisdictions.

58. LDK Solar was a Cayman holding company for a group of companies throughout the world involved in the manufacture of products used for solar energy. The group's onshore operations were conducted in various cities on the Mainland of the People's Republic of China ("PRC"). The offshore part comprised operations in Europe, North America and Hong Kong. The group established its offshore presence in order to access the international capital markets to finance the group's activities.

59. Briefly, the market collapsed and the company began to experience financial difficulties. Light touch provisional liquidators were appointed in Cayman to obtain the statutory moratorium to give the Company breathing room while the restructuring schemes were developed. The judgment of G Lam J in the Hong Kong proceedings, in which he approved the three HK schemes presented by the PL's, records that five schemes were promoted for the restructuring of the debts and each were linked and conditional upon, *inter alia,* each of the other schemes becoming effective in accordance with its terms. His approval of the three Hong Kong schemes and the recognition of the provisional liquidators by the New York Court were integral to the success to the restructuring. His judgment makes very good reading for its contrast with later judgments of the Hong Kong First Instance Court.

[19] Jones J FSD 14/2014

60. The case is said to be the first judicially approved, multi-jurisdictional debt restructuring of its kind for a PRC based group and a stellar example of co-operation between the courts of three countries, [20] and it illustrates the importance of cross border judicial co-operation in the restructuring of multinational corporations.

The Restructuring Officer Regime

61. While the development of the common law with respect to 'light touch' provisional liquidation has been very welcome, the legal fraternity and the Government considered that a statutory corporate rescue scheme was necessary to make the restructuring process more efficient and remove the stigma associated with the presenting a petition for winding up. I know it has been a topic of discussion in one of your sessions so I will not spend too much time on it but I will mention a few cases recently decided under the new amendment.

62. The first restructuring officers (ROs) were appointed by Kawaley J in *Oriente Group Limited* (Unrep. 8 December 2022) in a detailed judgment in this important and developing area.

63. The automatic extraterritorial moratorium on all proceedings (excluding criminal proceedings) against the company under section 91G takes effect upon the filing of the company's petition. Justice Kawaley noted that the section 91G stay *"turbo charges"* the degree of protection that filing a restructuring petition affords to the petitioning company, in contrast with the remedy of presenting a winding up petition for restructuring purposes which only definitively stays proceedings when a provisional liquidator is appointed or a winding up order is made (section 97(1) of the Act). A creditor's petition had already been presented when the Company applied for restructuring officers to be appointed. Kawaley J held that a restructuring officer's petition could be presented and that the resulting statutory stay prevented the creditor's petition from being proceeded with.

64. in refusing the application by a company for restructuring officers to be appointed in *Re Aubit International* (unrep. 4 October 2023), Doyle J drew heavily on that judgment and, as his wont, the learned Judge attempted a *" one stop shop"* summary of the relevant law and procedure culminating in para 126 which contains 24 concise bullet points which are worthy of consideration if you are ever thinking of applying to the Grand Court for the appointment of ROs. The need to guard against the potential abuse of the new regime was also noted as was the need to consult closely with creditors.

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[20] **International Corporate Rescue** Vol 13 (2016) Issue 1

65. In *Holt Fund SPC* (FSD unreported judgment 26 January 2024) Kawaley J, after in his own words the *"weeping and gnashing of teeth"* (para 43 of *Oakwise* which I'll come to in a moment) appointed ROs in relation to some portfolios of a segregated portfolio company. It is interesting to note that Kawaley J discharged them on 11 February 2025 as the restructuring proposals ultimately turned out not to be viable and lacked the requisite stakeholder support.

66. I don't think it is right to say that the Restructuring Officer regime was intended to replace the restructuring framework under the PL regime. The ability of the company to apply for the appointment of PLs was retained in the statute and has been formulated very broadly to maintain maximum flexibility.

67. This was conclusion of Asif J in In *Kingkey* (FSD unreported judgment 12 April 2024) who helpfully referred to the comparative merits of " light- touch" provisional liquidation and the use of the new restructuring officer regime in a concise and well-structured judgment.

68. Unsurprisingly for Cayman corporate structures, Kingkey's principal place of business was in Hong Kong and its shares were listed on the Hong Kong Stock Exchange. In the particular circumstances of that case, Asif J accepted the submission that it was likely to be of more utility to appoint provisional liquidators rather than ROs. Asif J at para 53 referred to two Hong Kong based provisional liquidators, who he appointed despite "*trenchant criticisms made of them by Justice Linda Chan in Hong Kong in a case in 2022*", such criticism appearing to have been based on a difference of opinion over the respective roles of the Cayman Court and the Hong Kong Court in cross- border insolvencies.

69. In another important development in the jurisprudence surrounding the new Restructuring Officer regime, Kawaley J in *Oakwise Value Fund SPC* (FSD unreported judgment 16 December 2024) followed Asif J in *Kingkey* which he felt provided him with the *"most persuasive possible support"* in respect of appointing JPLs in a restructuring context. He appointed JPLs over all three segregated portfolios (SPs) of *Oakwise Value Fund SPC,* a Cayman Islands segregated portfolio company. He found it "*obvious*" that if one wants to appoint court officers to do the sort of things that JPLs do, on the grounds that the company is *prima facie* liable to be wound-up, one would "*not appoint restructuring officers under a regime dedicated to restructuring alone.*"

Concluding Remarks

70. I have taken you all on a tour of Cayman's legal and economic history.

71. I hope I have made good the proposition that Cayman is a modern, progressive and vibrant jurisdiction with a rich common law history. Very little is written about Cayman's legal history, and I would encourage the publication of further texts in respect of it. To know where we are and where we are going, it is important to know where we have come from.

72. For the moment, I am going to leave it there. I thank you very much for your kind attention.