The Mergers & Acquisitions Review

Sixteenth Edition

Editor
Mark Zerdin

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PREFACE

As highlighted by the previous edition of *The Mergers & Acquisitions Review*, following the height of the covid-19 pandemic that tested the resilience of companies, the first half of 2021 had begun to tell a promising story for the M&A markets. This promise was realised with 2021 becoming a year for the record books with US$5.9 trillion in deals, a 62 per cent lift from 2020 and the highest value amount in more than a decade. Deal total also rose 0.4 per cent to 34,128.[1]

The figures for the first half of 2022 predictably dropped from 2021's record levels but the overall picture still remains a positive one. The value of global M&A transactions has dropped 21 per cent when compared to the record high of the first half of 2021, but deal values still broke US$2 trillion.[2] The decrease is understandable given macro events such as inflation, interest rates and the Ukraine war, which have created a more challenging market.[3]

Again, the Americas were the leading market for deal value in the first half of 2022 with a total of US$1.1 trillion from 4,771 deals. While these figures represent a 30.7 per cent and 18 per cent decrease, respectively, year-on-year, these figures should be put into the context, whereby not only was 2021 a record-breaking year, but by the fourth quarter activity was already beginning to normalise. In this respect, what has been witnessed to date in 2022 is a correction to more sustainable levels.[4] Across the Americas, the leading sectors for the first half of 2022 were technology, media and telecoms (1,712 deals totalling US$471 billion), energy, mining and utilities (316 deals totalling US$102.6 billion) and real estate (58 deals totalling US$96.6 billion).[5]

European dealmaking has experienced a similar decline in deal count with figures falling 19.7 per cent from 6,182 in the first half of 2021 to 4,963 in the first half of 2022. However, this decline was most prominent in the second quarter, following the invasion of Ukraine and as companies began to take a more risk off approach.[6] Interestingly, deal value has barely slipped at all and, in fact, rose quarter-on-quarter in the second quarter. Over the first half of 2022, there was €579 billion worth of transactions, down by only 6.5 per cent on last year. Private equity again played a large part in maintaining these values, with Blackstone Group

1 Bakertilly, 'Global dealmakers 2022: M&A market update'.
2 AllenOvery, 'M&A Insights H1 2022'.
3 ibid.
4 Mergermarket, 'Deal Drivers: Americas HY 2022'.
5 ibid.
6 ibid.

being particularly active in the megadeal for Atlantia (€42.7 billion) and the recapitalisation of logistics business Mileway (€21 billion).[7] Of the 10 largest deals across the EMEA, private equity accounted for no fewer than half.[8]

The year 2022 has been challenging and will likely continue to be so, with the Ukraine conflict showing no signs of end, inflation biting across the continent and cost of the living crisis drawing major attention. However, the M&A markets have thus far withstood these challenges, with dealmaking and value returning to a 'normal' level, following the heights of 2021. Should the M&A markets continue to remain resilient, the remainder of 2022 may follow the positive outlook displayed in the first half of 2022.

I would like to thank the contributors for their support in producing the 16th edition of *The Mergers & Acquisitions Review*. I hope the commentary in the following 35 chapters will provide a richer understanding of the shape of the global markets, and the challenges and opportunities facing market participants.

Mark Zerdin
Slaughter and May
London
November 2022

7 ibid.
8 ibid.

Chapter 9

CAYMAN ISLANDS

Suzanne Correy, Daniel Lee and Maximilian Chung[1]

I OVERVIEW OF M&A ACTIVITY

The Cayman Islands is recognised as one of the world's leading global financial services centres. M&A activity is therefore largely driven by global rather than regional or national trends. The aggregate value of global M&A increased in 2021 both in volume and value compared to 2020 (with the Bain, Global M&A Report 2022 (2022 Bain M&A Report))[2] recording deals worth US$5.9 trillion announced during the course of 2021, up from US$3.7 trillion in 2020. Although global deal-making in the first half of 2022 has returned to pre-pandemic levels, this is likely to change in the second half of 2022 as companies continue to look for opportunities notwithstanding the prevailing global macroeconomic and geopolitical backdrop, and recent M&A activity involving Cayman Islands entities has increased in line with this trend.

The three main types of entities used in the Cayman Islands are the exempted company, the exempted limited partnership and the limited liability company (LLC). New formation activity in the Cayman Islands increased in 2021 as compared to 2020: 13,413 exempted companies (2020: 9,360), 5,601 exempted limited partnerships (2020: 4,356) and 1,465 LLCs (2020: 916) were incorporated or registered in the Cayman Islands, with 96,213 exempted companies (2020: 92,550), 34,343 exempted limited partnerships (2020: 31,144) and 4,345 LLCs (2020: 3,118) being active as at 31 December 2021.[3] Formation activity for the period up to July 2022 (the latest statistics available) remains strong and in line with pre-pandemic levels.

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The key sources of regulation of M&A in the Cayman Islands are the Companies Act (As Revised) (Companies Act), the Limited Liability Companies Act (As Revised) (LLC Act) and common law.

Part XVI of the Companies Act provides the framework for a simpler and quicker merger process without the need for court approval for companies limited by shares (but not segregated portfolio companies). Under this framework, the Companies Act includes provisions permitting mergers and consolidations between one or more companies, provided

1 Suzanne Correy and Daniel Lee are partners and Maximilian Chung is an associate at Maples and Calder, the Maples Group's law firm.
2 Total announced deal value, Bain Global M&A Report 2022.
3 Cayman Islands Registrar of Companies, Registrar of Exempted Limited Partnerships and Registrar of Limited Liability Companies annual statistics.

that at least one constituent company is incorporated under the Companies Act. The LLC Act also provides for a similar framework for Cayman Islands LLCs, and mergers between companies and LLCs are accommodated.

Mergers, amalgamations and reconstructions by way of a scheme of arrangement approved by the requisite majorities of shareholders and creditors, and by an order of the Cayman Islands Grand Court under Section 86 or 87 of the Companies Act, are still available for complex mergers (and are mirrored in the LLC Act). The Companies Act provides a limited minority squeeze-out procedure (which, again, is mirrored in the LLC Act).

The Cayman Islands does not have a prescriptive set of legal principles specifically relevant to going-private and other acquisition transactions (unlike other jurisdictions such as, for example, Delaware). Instead, broad common law and fiduciary principles will apply.

While there are no specific statutes or government regulations concerning the conduct of M&A transactions, where a target company's securities are listed on the Cayman Islands Stock Exchange (CSX), the CSX Code on Takeovers and Mergers and Rules Governing Substantial Acquisitions of Shares (which exists principally to ensure fair and equal treatment of all shareholders) may apply.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

i Economic substance requirements

In common with a number of other jurisdictions, the Cayman Islands has introduced an economic substance regime under the International Tax Co-operation (Economic Substance) Act (As Revised) (Economic Substance Act) and related regulations and guidance notes. The Economic Substance Act is responsive to the global Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) standards regarding geographically mobile activities.

The Economic Substance Act contains certain reporting and economic substance requirements for relevant entities conducting relevant activities. Such entities are required to report certain information on their relevant activities on an annual basis to the Cayman Islands Tax Information Authority, each such annual report being due no later than 12 months after the last day of the relevant entity's financial year.

All entities having separate legal personality and more recently, certain partnerships registered in the Cayman Islands (including where registered as a foreign entity), are required to make a determination as to whether or not they are a 'relevant entity' and whether or not they conduct a 'relevant activity' as each term is defined in the Economic Substance Act, and make notification of their classification and status under the Economic Substance Act prior to the filing of their annual return with the relevant Registrar. 'Relevant entities' conducting 'relevant activities' are required to report certain information on their relevant activities on an annual basis to the Cayman Islands Tax Information Authority.

Entities that are an investment fund, a domestic company, a local partnership or tax resident outside of the Cayman Islands are not 'relevant entities' under the Economic Substance Act.

The terms 'investment fund' and 'domestic company' are defined in the Schedule to the Economic Substance Act, the term 'local partnership' is defined in the Partnership Act (As Revised) and guidance notes provide some practical guidance as to the meaning of 'tax resident'.

The Economic Substance Act applies economic substance requirements to the following categories of geographically mobile relevant activities previously identified by the OECD (and adopted by the European Union):

a banking;
b insurance;
c shipping;
d fund management;
e financing and leasing;
f headquarters;
g distribution and service centres;
h holding companies; and
i intellectual property.

Where a relevant entity conducts a relevant activity, the economic substance test will apply. Where a relevant entity conducts more than one relevant activity, the economic substance test will need to be satisfied in respect of each relevant activity conducted. A relevant entity conducting a relevant activity may satisfy portions of the economic substance test by outsourcing certain Cayman Islands activities to another person in the Cayman Islands. A relevant entity that outsources in this manner must be able to monitor and control the carrying out of the outsourced activities. A relevant entity that conducts holding company business is subject to a reduced economic substance test under the Economic Substance Act.

ii Merger regime and dissenting rights

The statutory merger regime contained in Part XVI of the Companies Act remains a popular tool for facilitating mergers involving Cayman Islands companies. Under this regime, two or more companies may merge, with their property and liabilities vesting in one of them as the surviving company.

Similar to other jurisdictions with equivalent regimes, the Companies Act provides for a right of dissenting shareholders to object to a merger and be paid the fair value of their shares upon their dissenting from the merger if they follow a statutory procedure. If the dissenting shareholders and the surviving company are unable to agree the fair value to be paid to the dissenting shareholders in the first instance, the Grand Court of the Cayman Islands is required to determine the fair value of the shares, and a fair rate of interest, if any, to be paid by the company to the dissenting shareholder.

The legislation provides that the rights of a dissenting shareholder are not available in certain circumstances; for example:

a to shareholders holding shares of any class in respect of which an open market exists on a recognised stock exchange or recognised inter-dealer quotation system at the relevant date; and
b where the consideration for such shares to be contributed are shares of the surviving or consolidated company (or depositary receipts in respect thereof), are shares of any other company (or depositary receipts in respect thereof) that is listed on a national securities exchange or designated as a national market system security on a recognised inter-dealer quotation system, or are held off record by more than 2,000 holders.

Although the number of dissent actions in the Cayman Islands has fallen since the peak of 2017, those that have been filed show a marked upward trend both in the number of the dissenting shareholders and the value of the shares being dissented. This appears to be driven in large part by arbitrage investors, purchasing positions in companies going through mergers particularly with a view to exercising dissent rights. In certain notable deals, the company's trading price between announcement of the merger and the closing, and the volume of trading of the company's stock, rose sharply as arbitrage investors increased their positions. It remains to be seen what effect this level of dissenter activity will have on deal structure; in some circumstances it has prompted parties to consider alternative structures including schemes of arrangement, being the way in which most takeovers and take-privates were structured in the Cayman Islands prior to the introduction of the merger regime, and merger agreements sometimes include 'maximum dissent' clauses to control the risk. Although schemes of arrangement involve court supervision, higher requisite majorities and generally higher deal costs, they do not involve dissenter rights or any other 'cash out' or 'fair value' option.

To the end of the third quarter of 2022, the Grand Court has ruled on only six merger fair value appraisal actions in the Cayman Islands, while there has been one appeal to the Privy Council, in *Shanda Games*.[4] These decisions set out important guidance as to how the 'fair value' of the dissenter's shares will be determined if a shareholder has validly dissented from a statutory merger. The following guidance can be taken from these decisions:

a The Grand Court is required to value the actual shareholding that a shareholder has to sell. This means that where a shareholder holds a minority interest, the shares should be valued as such, if necessary by applying a minority discount, where appropriate.

b The valuation method or methods to be applied in any given case is a fact sensitive issue. Typically, the Grand Court will hear expert evidence on the values evidenced by the traded share price (for listed companies), the merger process and consideration, a discounted cash flow (DCF) calculation and market comparables. Where more than one methodology is adopted, the Grand Court will give particular weightings to the different methodologies as appropriate in the circumstances. The fair value amount must not be impacted by the limitations and flaws of particular valuation methodologies, rather 'fairly balancing, where appropriate, the competing, reasonably reliable alternative approaches to valuation relied on by the parties' (in *Trina Solar Limited*). The Grand Court may choose to place exclusive weight on one valuation methodology only (*FGL Holdings*) where appropriate, even if the experts suggest a blended approach, or using another methodology entirely.

c If a company's shares are listed on a major stock exchange, this does not mean that a valuation methodology based upon its publicly traded prices will be followed automatically, although in *FGL Holdings* the Grand Court has recently accepted the efficient market hypothesis, meaning that the market price of a liquid stock with no material non-public information will often be a good indicator of fair value. To determine fair value, the Grand Court must assess the true monetary worth of the dissenters' shares taking into consideration all relevant circumstances and facts, including information that may not have been available to the market.

d The Grand Court will also look closely at the transaction process that resulted in the merger consideration being agreed, including the role played by the special committee

4 The trial of *IKang Healthcare* was heard by the Grand Court in April of 2022, and judgment is pending, at the time of writing. An appeal by the dissenting shareholders to the Court of Appeal in *Trina Solar Limited* was heard in May 2022, and judgment is also pending.

(if any), the preparation of the management projections, negotiations on price and deal terms, and whether other parties were given the opportunity to make a competing bid (and if not, whether this matters).

e Despite the dissenting shareholders typically pushing hard for sole reliance on a DCF or income-based calculation, in more recent cases the Grand Court has recognised the benefits of a market approach to valuation and has tended to use a DCF valuation as a cross-check only. In *FGL Holdings*, for the first time the Grand Court placed no reliance on an income approach and concluded that the merger price represented fair value.

f The date for determining fair value is often the date on which the shareholders approved the transaction; this is the date on which the offer could be accepted. However, the Grand Court has also expressed that each case will turn on the facts and that the date is not to be rigidly fixed for all cases.[5] Importantly, the Grand Court concluded that dissenting shareholders could not take advantage of the cost savings going forward as a result of the merger. The Grand Court's view was that dissenting shareholders should not benefit from any enhancement in the value of their shareholding attributable directly to the transaction from which they have dissented.

The merger legislation in the Cayman Islands is very similar to that in Delaware and the legislative drafters borrowed from the Delaware statute. As such, the Grand Court will often look to Delaware appraisal precedents as a guide. However, in *Shanda* the Privy Council confirmed that the similarities between the Delaware appraisal remedy and Section 238 of the Companies Act do not mean that the Delaware jurisprudence on appraisal actions has been adopted wholesale into the Cayman Islands. In that case (and in an earlier case, *Integra*) the Grand Court had followed Delaware and Canadian authority on minority discount, holding that in a fair value appraisal the dissenters' shares were to be valued as their pro-rata share of the value of the whole company, not as a block of shares offered for sale, such that there was no applicable 'minority discount'. The Court of Appeal took a different view and followed what it considered to be the public policy reflected in English case law, to the effect that 'it was not unfair to offer a minority shareholder the value of what he possesses (i.e., a minority shareholding). The element of control is not one that ought to have been taken into account as an additional item of value in the offer of these shares.'

The Privy Council upheld the Court of Appeal's decision and specifically noted that while the jurisprudence of Delaware is of great value in this field, the Cayman Islands legislature can only have intended that Cayman Islands courts should interpret this phrase against the backdrop of its own jurisprudence. In other 'forced sale' legislation in England and the Cayman Islands, a minority discount would be applied. There was nothing in the Cayman Islands merger legislation that suggested that a different regime had been adopted for mergers.

Whether a minority discount will be applied in any given case is of course fact sensitive and depends on the valuation methodology adopted. For example, in *Re Qunar Cayman Islands Limited*, the Grand Court, while following the approach of the Court of Appeal in *Shanda*, considered that the applicable majority discount was nil, given Qunar's securities were highly liquid and there was no risk of minority disadvantage regarding management control or payment of dividends.

5 This issue was disputed at the directions hearing of *SINA Corporation FSD 0128 of 2021* and the dissenting shareholders there have sought leave to appeal the judge's ruling.

As a separate point, and another example of where the Cayman Islands jurisprudence is different from Delaware, a series of decisions culminating in a Court of Appeal ruling in *Qunar* affirmed that the Grand Court has jurisdiction to make an interim payment order after a dissent petition is filed but before the trial, meaning that a dissenting shareholder may be entitled to receive an interim payment effectively at the outset of the proceedings. In many cases the amount of the interim payment has equalled the merger consideration on the basis that a company has admitted this reflects fair value (albeit, this does not necessarily follow). However, *eHi Car Services Limited* confirmed that where a company has not conceded the merger consideration represents fair value, in making an interim payment order, the Grand Court must identify the irreducible minimum amount that could safely be assumed the dissenters would receive in any event without venturing into disputed issues of fact or valuation; this may well be less than the merger price depending on the circumstances of the case.

In another recent development, in *Changyou* the Court of Appeal found that dissent rights also apply to 'short-form' mergers under Section 233(7), where a company is merging with a subsidiary and no shareholder vote or EGM is required to give effect to the merger, notwithstanding the lack of an express wording to this effect. The thrust of the Court of Appeal's conclusion was that Section 233(7) must be read in this manner, so as not to conflict with the Bill of Rights, which permits the compulsory acquisition of property only where provision is made by the relevant law for the prompt payment of adequate compensation and access to the court for the determination of the amount of such compensation.

iii Global transparency

Already recognised by the OECD, the International Monetary Fund (IMF) and other international bodies for its transparency and standards being consistent with those of other major developed countries, the Cayman Islands is acknowledged as a first-class jurisdiction for conducting international business. The government has also now implemented a number of legislative developments, including:

a the introduction of an economic substance regime responsive to global OECD BEPS standards regarding geographically mobile activities, in line with rapidly implemented regimes on a level playing field basis by all OECD-compliant 'no or only nominal tax' jurisdictions;

b the introduction of a beneficial ownership register regime, discussed further below;

c the repeal of the Confidential Relationships (Preservation) Act and its replacement by the Confidential Information Disclosure Act, which offers more understanding and definition with regard to the mechanisms in place for sharing confidential information with the appropriate authorities;

d the introduction of data protection legislation;

e the abolishment of bearer shares;

f the implementation in the Cayman Islands of the model legislation published pursuant to the OECD's BEPS Action 13 Report (Transfer Pricing Documentation and Country-by-Country Reporting);

g the introduction of legislation relating to regulation of collective investment vehicles, and limited investor mutual funds;

h the introduction of legislation dealing with the regulation of virtual asset service providers, incorporating Financial Action Task Force (FATF) standards for anti-money laundering, which allows for the supervision of persons and entities who are involved in businesses that use or rely on virtual assets; and

i recent reforms to the Cayman Islands restructuring laws, which allows debtors to file in the Cayman Islands court for the appointment of restructuring officers and obtain an immediate stay on a unsecured creditor action, without having to file a winding-up petition.

The Cayman Islands government has also indicated a willingness to commence discussions with those jurisdictions that are participating in the G5 initiative (for the exchange of beneficial ownership information with law enforcement agencies) on entering into bilateral agreements with the Cayman Islands, similar to the beneficial ownership regime now in place with the United Kingdom.

These measures demonstrate the Cayman Islands' continued efforts to comply with and promote transparency through close collaboration and compliance with the relevant global regulatory bodies, tax authorities and law enforcement agencies in line with international standards, while simultaneously respecting the legitimate right to privacy of law-abiding clients.

The Cayman Islands has agreements to share tax information with authorities in more than 100 other countries, including the United States under the Foreign Account Tax Compliance Act, and is in the early adopter group for the Common Reporting Standard, the OECD's global tax information exchange standard.

The Cayman Islands beneficial ownership register regime (the BOR Regime) has been in place since mid-2017. Exemptions mean that certain Cayman Islands companies and LLCs are not in scope for the purposes of the BOR Regime, although if not in scope they must make a filing to that effect with their corporate services provider in the Cayman Islands. If a company or LLC is in scope, it must take 'reasonable steps' to identify its beneficial owners and certain intermediate holding companies, and to maintain a beneficial ownership register at its registered office in the Cayman Islands with a licensed and regulated corporate service provider.

This register must generally record details of the individuals who ultimately own or control 25 per cent or more of the equity interests, voting rights or rights to appoint or remove a majority of a company's directors, or LLC's managers, together with details of certain intermediate holding companies through which such interests are held.

Corporate service providers must facilitate access to information extracted from the register through a centralised IT platform operated by a competent authority designated by the government. The information is not publicly accessible or searchable. Only Cayman Islands and UK authorities currently have rights to request information, and only as individual (and not automatic) requests. The information on the beneficial ownership register can already be requested by UK authorities under existing information exchange gateways, so in essence the new regime merely seeks to streamline the process to provide for quicker and more discrete search accessibility.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

The vast majority of M&A activity involving Cayman Islands entities concerns foreign businesses and investors as a result of the offshore nature of the jurisdiction. These businesses and investors are based in a broad range of international jurisdictions.

A large number of M&A deals are still originating from the United States, while European deals continue to feature and Asian-related transactions continue to grow.

The Asian growth can be evidenced by the popularity of the Cayman Islands exempted company as a listing vehicle in Asia: as at the end of 2021, 1,234 of the 22,219 companies listed on the Main Board of the Hong Kong Stock Exchange were Cayman Islands exempted companies.[6]

The Cayman Islands continues to be an attractive jurisdiction for the structuring of offshore transactions for a number of reasons, including:

a the speed with which vehicles can be established (usually within one business day), and without the need for any prior governmental approvals;

b the laws of the Cayman Islands are substantially based upon English common law and a number of key English statutes. This gives Cayman Islands law and the legal system a common origin with those of many of the jurisdictions of its users, including the United States;

c the Cayman Islands has a modern and flexible statutory regime for companies, limited partnerships and LLCs;

d as described further below, the Cayman Islands has no direct taxes of any kind;

e the lack of exchange control restrictions or regulations; and

f there is no requirement that a Cayman Islands entity should have any local directors or officers. Nor is there any requirement for local service providers (except that for funds regulated under the Mutual Funds Act (As Revised) or the Private Funds Act (As Revised), where there is a requirement for their audited accounts to be signed off by a local firm of auditors). The appointment of local service providers, however, may assist entities with obligations under the Economic Substance Act to discharge those obligations.

As discussed above, the Cayman Islands is recognised by the OECD, the IMF and other international bodies for its transparency and standards consistent with those of other major developed countries.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

As discussed above, the merger regime of Part XVI of the Companies Act continues to be a popular tool for facilitating mergers involving Cayman Islands companies, and we continue to see listed companies being the subject of take-private transactions led by private equity and management in addition to traditional strategic corporate acquisitions. The merger regime has also proven to be a popular mechanism for business combinations for special purchase acquisition vehicles.

6 HKEx Fact Book 2021.

Examples of deals of note announced or closed during 2021/2022 that involved Cayman Islands vehicles include:

a the acquisition of Hong Kong based Baring Private Equity Asia by Nasdaq Stockholm listed EQT AB for €6.8 billion, the result of which once completed, the combined entities will operate under the brand BPEA EQT Asia;

b the acquisition of Vacasa, a leading vacation rental management platform, by SPAC TPG Pace Solutions Corp, resulting in a pro-forma equity value of US$4.5 billion for the combined company;

c the acquisition of Grab Holdings, a digital transportation and delivery services platform, by SPAC Altimeter Growth Corp., resulting in a market capitalisation of US$40 billion;

d the acquisition of ironSource, a leading business platform, by SPAC Thoma Bravo Advantage, resulting in an implied pro forma equity value of approximately US$11.1 billion; and

e the acquisition of Zegna Group, a world-renowned luxury group, by SPAC Investindustrial Acquisition Corp, resulting in an initial enterprise value of US$3.1 billion.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

As a leading jurisdiction for the establishment of private equity funds, it is perhaps unsurprising that a significant number of Cayman Islands M&A deals are also financed by private equity. Traditional sources also continue to be a key provider of finance for M&A involving Cayman Island entities, including in respect of a number of the deals listed above.

In recent years, the formation of SPACs, generally listed on either the New York Stock Exchange or NASDAQ (although listings elsewhere such as Euronext are appearing), has re-emerged as a popular fundraising tool, with many traditional private equity managers establishing SPACs for the first time. The Cayman Islands now rivals Delaware as the most popular choice of domicile for SPACs and we anticipate the significant number of these vehicles to drive additional Cayman Islands-related M&A in the coming years.

VII EMPLOYMENT LAW

A range of legislation and licensing requirements apply to companies seeking to carry on local business in the Cayman Islands and employ local personnel. In view of the nature of offshore business, the vast majority of Cayman entities do not have employees in the Cayman Islands, and these requirements are therefore often not relevant to Cayman Islands M&A deals.

Employment standards in the Cayman Islands are currently governed by the Labour Act (As Revised) (Labour Act), the Health Insurance Act (As Revised) and ancillary regulations (Health Act), the National Pensions Act (As Revised) and ancillary regulations (Pensions Act), and the Workmen's Compensation Act (As Revised) and ancillary regulations. These laws establish minimum employment standards but do not preclude an employer from setting conditions that are above the minimum.

The Labour Act includes provisions dealing with probation periods, employment termination, vacation leave, public holiday pay, sick leave, compassionate leave, maternity leave, severance pay, unfair dismissal and health, safety and welfare at work.

The Health Act requires that health insurance cover is provided to employees, and to their uninsured spouses and children.

The Pensions Act requires an employer to provide a pension plan or to make a contribution to a pension plan through an approved pension provider for every employee who is between 18 and 60 years old (an employer is not required to provide a pension plan for non-Caymanian employees who have been working for a continuous period of nine months or less).

VIII TAX LAW

i Cayman Islands taxation

The Cayman Islands has no direct taxes of any kind: no income, corporation, capital gains, dividends, royalties, payroll, withholding taxes or death duties. Under the terms of the relevant legislation, it is possible for all types of Cayman Islands vehicles – companies, unit trusts, limited partnerships and LLCs – to register with and apply to the government for a written undertaking that they will not be subject to various descriptions of direct taxation, for a minimum period, which in the case of a company is usually 20 years, and in the case of a unit trust, limited partnership and an LLC, 50 years.

Stamp duty may be payable in connection with the documentation executed in or thereafter brought within the jurisdiction of the Cayman Islands (perhaps for the purposes of enforcement). In most cases, this duty is of a relatively *de minimis* fixed amount except in limited circumstances, such as when security is being granted over property in the Cayman Islands.

ii Automatic exchange of information legislation

The Cayman Islands has signed an inter-governmental agreement to improve international tax compliance and the exchange of information with the United States (US IGA). The Cayman Islands has also signed, with more than 100 other countries, a multilateral competent authority agreement to implement the OECD Standard for Automatic Exchange of Financial Account Information – Common Reporting Standard (CRS).

Cayman Islands regulations have been issued to give effect to the US IGA and CRS. All Cayman Islands financial institutions are required to comply with the registration, due diligence and reporting requirements of these regulations, except to the extent they are able to rely on certain limited exemptions, in which case only the registration requirement would apply under CRS.

iii Country-by-country reporting

As part of the Cayman Islands' ongoing commitment to international tax transparency, the Cayman Islands has adopted Country-By-Country reporting rules pursuant to the OECD's BEPS Action 13 Report. Pursuant to this initiative, qualifying multinational enterprises (MNE) are required to report annually to the Cayman Islands Tax Information Authority, certain information as set out in the model legislation for each tax jurisdiction in which the MNE operates.

IX COMPETITION LAW

There is no specific anti-competition legislation that is relevant to Cayman Islands M&A. Given the offshore nature of Cayman Islands M&A, competition law issues are usually a question of the relevant onshore jurisdictions where the underlying businesses that are the subject of the M&A are based.

X OUTLOOK

In this chapter we have to an extent focused on a review of 2021 M&A. Although market conditions have cooled comparatively to the all-time highs of 2021, the outlook for 2022 remains positive. In a recent PwC survey,[7] 77 per cent of chief executives expected M&A activity to improve over the next 12 months. That confidence, together with the dry powder held by the number of Cayman Islands-based SPACs established during 2020 and 2021, leads us to conclude that the coming year is likely to be a busy period for Cayman Islands M&A.

The existing legal framework of the Cayman Islands, together with the continued focus on being at the forefront of global compliance developments, and the proven ability of public and private stakeholders to work together to enhance local legal and regulatory regimes when required, will continue to ensure that the Cayman Islands remains the offshore jurisdiction of choice for global M&A transactions in future years.

7 PwC 25th Annual Global CEO Survey.

Appendix 1

ABOUT THE AUTHORS

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Suzanne Correy is a partner in the Cayman Islands Corporate and Latin American teams at Maples and Calder, the Maples Group's law firm. She has extensive experience in all aspects of corporate work, including joint ventures, IPOs and M&A, and also advises on a wide variety of structured finance, capital markets and investment fund transactions. Suzanne maintains a strong focus on public company work, advising clients through all stages of their growth, from startup to IPO and beyond.

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