

GLOBAL OPPORTUNITIES

Tahir Jawed of Maples and Calder, Dubai; Niaz Khan, of DMS Management and John Skelton of Kryss & Associates discuss what the Cayman Islands can offer the Mena region



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MENA FM: How does Cayman differ from other jurisdictions and what advantages does it offer fund managers in the Mena region ?

Tahir Jawad (TJ): The Cayman Islands offer a secure, well-regulated, efficient and user-friendly jurisdiction for fund formation and investment holding structures.

Due to its largely well-established position as the leading domicile for fund formation, it has developed a highly efficient and respected legal and regulatory structure which is attractive to fund managers around the world and offers security and reliability to investors. There is also the benefit of an English-based legal structure and tax-free environment, which allows investors and managers to structure their transactions in a tax-efficient manner.

An additional benefit are the highly qualified fund professionals based not only in Cayman but elsewhere around the world. The Middle East is now home to several international law firms and fund administrators with a Cayman practice, making Cayman more accessible for Middle East fund managers.

Niaz Khan (NK): Cayman is the proven, time- and stress-tested jurisdiction of choice for fund

managers and institutional investors. In addition to what my fellow participants have observed, I would highlight the response of Cayman to the recent crises - no bail outs, no institutional failures, meaningful and timely court rulings, and responsive corporate governance.

John Skelton (JS): The Cayman Islands is a well-recognised jurisdiction for establishing hedge funds, offering an excellent choice of international professional service providers including accountants, attorneys, administrators and directors from which to draw from. Hedge fund managers from the Mena region will be largely familiar with the English legal system, upon which Cayman companies law is based. The legal framework permits flexibility and provides Cayman hedge funds and investment funds with the ability to carry on business in a jurisdiction with sound and prudent laws and regulations.

Another important factor to consider is that, in the unfortunate event a company finds itself in difficulty, Cayman's robust insolvency laws are more creditor friendly than those of some other jurisdictions when it comes to rights and remedies.

MENA FM: In what areas is Cayman currently experiencing growth?

TJ: Notwithstanding the recession, Cayman is experiencing significant activity in hedge fund and private equity fund formation and international corporate cross-border transactions.

NK: Locally, the Cayman government's pro-immigration profile is helping to continue to attract global talent to Cayman's shores, benefiting all stakeholders. Internationally, we are seeing an explosion of activ-

“The Middle East is now home to several international law firms and fund administrators with a Cayman practice” - *Tahir Jawad*

ity in Asia on the hedge fund and private-equity side. Mena is also experiencing growth, largely in proportion to its size in the global industry, and we look forward to working with our partners there to further serve and develop the region.

JS: According to the Cayman Islands Monetary Authority (CIMA) the most positive movements in 2009 were in the area of the captive insurance market. That said, figures released in January 2010 also showed a significant increase in fund formations and reduction in fund terminations compared to the same period in 2008.

MENA FM: What challenges is the domicile facing? To what extent is the fund industry in Cayman worried by the AIFM EC directive?

FATF anti-money laundering requirements. Cayman has also entered into many tax information exchange agreements with several EU member states.

NK: The greatest challenge Cayman faces is global regulatory creep, which is a major challenge for all jurisdictions. Luckily, Cayman has a proven track record as a world-class jurisdiction, with a flexible, cost-effective regime for conducting business, so the opportunities will continue to grow. With respect to the AIFM Directive, it is important to remember that this is not a zero-sum game. A growing hedge fund industry in Europe and elsewhere is good for investors and good for Cayman. While the European product will be attractive to some, it's not a substitute for the flexibility and lower

effect of the passporting provisions of the directive could ultimately be that Cayman funds become more widely and more easily marketable within the EU than is presently the case.

MENA FM: What is the domicile doing to attract business from the emerging markets and Mena region in particular?

TJ: Cayman provides a business-friendly neutral platform for international investors to pool their investment capital for deployment into emerging markets and Mena investments, including important infrastructure projects. Our people are continually listening to the market through offices in Asia and the Middle East in order to provide a first class service to the region and to make improvements to our product.

NK: Cayman is attractive to emerging markets and Mena for

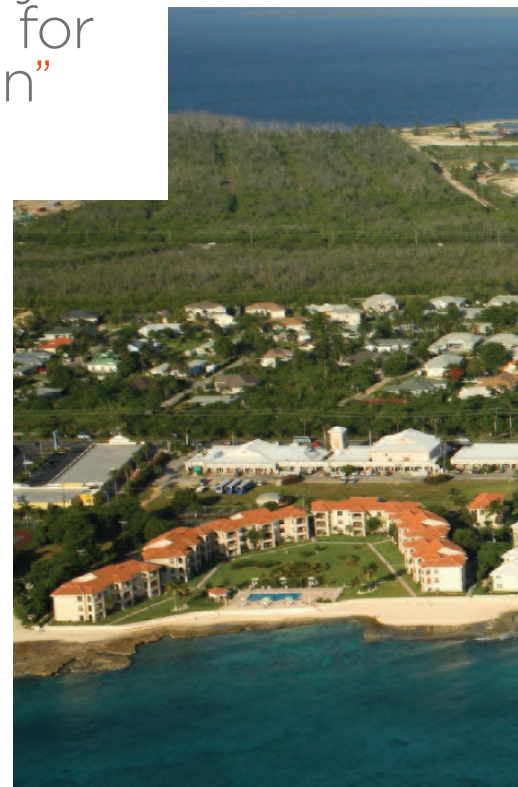
“A growing hedge fund industry in Europe and elsewhere is good for investors and good for Cayman”

– **Niaz Khan**

TJ: As with all the major financial centres, Cayman is playing its part in responding positively to the call for proportionate regulation of systemic risk in the global financial system. Cayman has already engaged with the Europeans to explore the ways in which Cayman, as the leading jurisdiction for hedge fund and private equity fund formation, can participate in the dialogue around the EU Directive to ensure that EU pension plans and institutional investors can continue to have access to the world's best alternative investment funds based in Cayman. Cayman is a member of the IOSCO multinational memorandum of understanding on co-operation between securities regulators and complies with

cost-structure of a Cayman product. We are confident all the same that Cayman will continue to adopt the necessary practices to maintain its position as the jurisdiction of choice for hedge funds.

JS: The AIFM EC directive certainly poses challenges for Cayman along with any other offshore jurisdiction, however, Cayman has demonstrated in the past that it is able to respond positively to challenges. As a full member of the International Organisation of Securities Commissions (IOSCO), the global standard setting body for the regulation of securities markets, Cayman will be better placed to be proactive in assessing what steps it needs to take. The ef-



largely the same reasons it is attractive to markets globally. It has a well-understood legal framework, significant talent, reasonable pricing, and a can-do attitude. It's easy to pass laws, but laws don't change culture, and the culture of Cayman is the culture of global business.

JS: I am not sure Cayman is doing anything different than it has done in the past. Its membership of IOSCO and the signing of several tax information sharing agreements corroborates its commitment to international standards and strengthens the jurisdictions appeal.

MENA FM: What opportunities do you see arising for Cayman in the future?

TJ: Given the need for pension plans globally to increase their investments in alternative investment products and to diversify their investments into Mena and emerging market regions,

we believe that Cayman investment funds and business structures can continue to play an important role in the allocation of global capital flows. Cayman can build upon its position as a market leader in the formation of investment fund products.

NK: Cayman will continue to grow and serve Mena fund managers for whom proven quality is of paramount importance – quality not only of judiciary systems, but regulation and talent. At DMS we are focused on hedge fund governance, and as

more substance is sought from offshore centres and investors demand more independent oversight of products, we see significant opportunity in Mena.

JS: Cayman is always looking for opportunities to offer new products or better and improved products to the market, including clients with connections in Asia and indeed the Middle East. There may also be opportunities in distressed asset funds, emerging markets and 'essential' industries such as healthcare.

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