

Cayman Funds

2020

Agile, adaptable, resilient, reliable

Why Cayman can always
cope with change



The 2020 debate

The annual Cayman Funds
roundtable discussion

Private Funds Act

The implications for every
part of the funds sector

Economic substance

Why new rules from the
EU could benefit Cayman



MINISTRY OF
FINANCIAL SERVICES
& HOME AFFAIRS
CAYMAN ISLANDS GOVERNMENT



OPTIMISTIC IN THE FACE OF CONSTANT CHANGE



Following a year of new regulatory changes and just days before the Private Funds Act was enacted, *Cayman Funds* magazine in association with EY held a roundtable discussion to take the pulse of funds professionals on Cayman. While the overall mood was optimistic, the discussion also centred on the continuous pace of change and the challenges this presents.

NOTE: THIS EVENT TOOK PLACE ON FEBRUARY 5, WELL BEFORE THE IMPLICATIONS OF COVID-19 WERE CLEAR AND JUST BEFORE THE PRIVATE FUNDS BILL WAS ENACTED INTO LAW. ITS CONTENT SHOULD BE READ IN THAT CONTEXT.

WYN JENKINS: Could we start by outlining the overall health of the funds sector on Cayman and move into the opportunities and challenges caused by innovation and technology?

DAVID MCGIBBON: The number of funds here is steady, but some big pieces of legislation have passed recently, and there are various other external forces on Cayman, such as economic substance and the UK's departure from the EU. Innovation technology is also a key topic.

We want to look at talent in the jurisdiction, and sustainability, and we will be doing some interactive polls today.

HEATHER SMITH: There is a lot going on but the number of funds in the jurisdiction remains steady. The cohesiveness of the public and

private sectors in terms of getting through all the various regulatory changes that are on the table remains very good. The private funds bill will shortly be introduced and we are continuing to look at anti-money laundering (AML) requirements.

With regard to the fund numbers as of December, it was reassuring to see that the numbers had not changed significantly from the end of 2018. We recorded 10,857 funds as at December 31, 2019 compared with 10,992 a year earlier. There were ebbs and flows during 2019 but the numbers were higher than expected in the last quarter of the year resulting in an overall strong finish. A trend seen in 2018 continued in 2019 where, if a fund is not operational—not meeting its targets—it was de-registered.

A survey of participants' views on certain topics was also carried out during the event. The results of this can be seen on page 40.



Considering Cayman’s position globally, we do jurisdictional comparisons and our growth continues compared with other jurisdictions that offer similar lines of business.

It is important that we reassure the industry and the market of our ability to effectively manage all the various regulatory requirements that are deemed necessary. We’re considering the requirements and the deployment of the risk-based approach to supervision; we are putting our efforts where they need to be.

The objective is not to regulate everything. The objective is for there to be a proportionate and appropriate approach to regulation and supervision, and to ensure that the industry remains engaged and doing its part as a gatekeeper.

Therefore the overall numbers provide the reassurance that we are on the right track, and despite all the things that are coming our way, we continue to head in the right direction.

MCGIBBON: What are some of the challenges and opportunities we’re facing specifically around innovation and technology?

JUDE SCOTT: The biggest thing we’re seeing is the banks globally looking at how they tackle the digital revolution and specifically cryptocurrencies. We’re now seeing global banks partnering to find solutions in conjunction with central banks, so that secure digital currencies can be used through their framework.

That’s going to open up a whole new channel of opportunity for peer-to-peer transactions. In this digital framework they’re building,

IN ATTENDANCE



Michelle Bahadur, director, Department for Financial Services Policy, Cayman Islands government



Mark Cook, director, International Management Services



Mark Fagan, director, Highwater



Chris Gauk, president, Cayman Islands Institute of Professional Accountants



Leanne Golding, director, Harbour



Hayden Isbister, managing partner, Mourant



David McGibbon, partner/principal, EY



Gwen McLaughlin, director, Trident Trust



Victor Murray, director, MG Management



Allison Nolan, chair, Education and Research Committee, AIMA Cayman



Cassandra Powell, president, Cayman Islands Directors Association



Tim Rossiter, chair, Cayman Islands Fund Administrators Association



Heather Smith, head of Investments Supervision Division, Cayman Islands Monetary Authority



Jude Scott, chief executive, Cayman Finance



Moderator: Wyn Jenkins, managing editor, Cayman Funds



“The objective is for there to be a proportionate and appropriate approach to regulation.” *Heather Smith*



“We have great minds here in Cayman who are working on solutions.” *Jude Scott*

it also means speed of transaction, and the viability of new digital assets now being developed, to be used in peer-to-peer or quasi peer-to-peer environments.

That works well for our industry, because now you are able to digitise any types of asset around the world and make them available to investment managers, to trade in and out. The other area that is going to be really important, a potential tipping point, is the custody of digital assets and how they are stored. We have seen examples of digital assets being stolen or lost.

Being able to safeguard these digital assets and wallets is going to be extremely important. The whole investment industry, how it works, how it operates, is going to change. Whereas funds are still managed on a regional basis, a whole new dynamic digital global platform for much of our investment managers will emerge.

There are interesting things to come but we have great minds here in Cayman who are working on solutions.

CASSANDRA POWELL: The majority of our members are in the investment services space, and for them the focus is on the technology in the back office and at service providers. We speak a lot with administration firms and the audit firms on what they're doing from a technology standpoint to enhance the service offering to make processes more efficient and cost effective.

From the administration standpoint there is a big focus on the compression on fees and trying to remain competitive, therefore we see some administration shops making larger spends on technology and looking to offer additional lines of services as a way to increase revenue and be a bit more competitive.

At the regular board meetings, these are key topic areas for the directors to understand how technology is being used and what safeguards are in place for client data.

TIM ROSSITER: For our members the regulatory changes and the various geopolitical issues we're dealing with are the big issues as we provide the infrastructure to our clients; we help them cut through the complexity of regulation and other challenges. Whether it's fees, custody or valuation, they want to bring all that information together and make sure that the various stakeholders of their funds, management, investors, or regulators, are able to access all the information they need, and ensure it's accurate.

I suppose 'regtech' is the term but that is just one aspect of our services and you need to make sure that it's done in an efficient and a cost-effective manner, otherwise it becomes prohibitive to your client. With all the changes we've seen over the last year our members' focus has been to facilitate compliance for clients, make it as painless as possible and provide the right information in an accurate, timely, efficient and cost-effective manner.

ALLISON NOLAN: Managers based in Cayman and elsewhere are looking at new technology solutions and how their portfolios can interact with the systems of their administrators. From the perspective of a fund director, our members are seeing a lot of development around technology in every field. That's one of the challenges: keeping abreast of the latest developments and understanding the solutions that fund managers are putting in place and assessing their adequacy.

CHRIS GAUK: For most of our members there's a hesitation to accept funds that predominantly trade in cryptocurrencies. Perhaps

up to a year ago there was a lot of discussion, but because of the complexity around laws and regulations they are wary and there is less discussion today.

From an advisory point of view, assessments being made on the taxation implications is one of the key focus areas.

MCGIBBON: Regtech has definitely been one of the areas of real traction where clients look at how do we scale, how do we remain in compliance while managing the costs and other competing priorities?

That's brought in other things like taking a risk-based approach to AML, and how do you provide technology to do that? A lot of technology has initially been back office-focused, looking at cost optimisation, optimising certain processes, doing robotics process automation or using artificial intelligence to remove repetitive tasks. All those should allow firms to focus on more high value and decision-led tasks and be more revenue-focused.

It can also allow more focus on client experience—not just for the risk and regulatory function but data and analytics allowing us to serve clients better.

The question is how better to understand the business, on the costs side: how do we get efficiencies of all of this manual data reporting and dashboards? And how do we leverage this data in a better way to impact the business strategy?

There's definitely been a challenge for people to understand what is available and plot a technology roadmap. There's always the balance of technology spend and investment and cost optimisation and efficiency.

JENKINS: How is the government and regulator coping with changes in technology?

MICHELLE BAHADUR: From a virtual assets perspective, when there's innovation in the markets the regulator is always playing catch-up. We are in the process of developing a regulatory framework for virtual asset service providers in the jurisdiction and included in that are trading platforms, custodians and issuers.

Those are the types of entities that are required to be regulated. We want to make sure we understand what's going on in the jurisdiction and that we put rules in place that are fit for purpose for the market and that satisfy global regulatory standards.

That might include looking at how we incorporate these virtual assets in existing legislation. We are a little behind some other jurisdictions but it's starting to settle down. We have standards we can work from and a lot of those other jurisdictions are now going to have to go back and amend their frameworks to cover international standards.

SMITH: One perspective is the supervisory response to changing technology and to recognise how financial services might change and understand where the risk may lie around the types of products that are being introduced.

There is then technology to enhance the services that we provide because although we're a regulator we are also providing a service which underpins what service providers have to do. CIMA's ability to receive information, analyse it and then respond appropriately and in a timely manner, based on such information, is very important.

You're looking at a balance of resources between humans, whereby analysis is being done, and technology, to give you the timeliness of such reporting.

Producing statistical information quickly and accurately is also something that can be enhanced by technology.

A lot of regulatory initiatives are driven by the quest for transparency.

The more information we have, and the more we have tools and the mechanisms to analyse that information in a timely manner, the better we can respond, defend or even enhance supervisory approach thus demonstrating how we're adding value to the overall global financial sector.

Technology is critical for CIMA and certainly an area of focus for us in terms of ensuring that we are putting our resources where they need to be. If we can automate as much as possible in areas such as the authorisation process, we can then spend more time on supervision, including the analysis of the information that's coming to us so that we can respond appropriately.

Technology also enables us to keep abreast of changes to the way in which services are being delivered and to be better able to identify any risks around such delivery channels.

Again, our objective is not to regulate everything, even though it may feel that way sometimes. The goal is to regulate where needed, and to ensure that oversight is appropriate and proportionate.

Fostering and supporting the industry's growth is a key consideration but we also need to ensure that we can say, hand on heart, that our financial services industry does not pose a risk to global financial stability.

POWELL: What goes hand in hand with that is service providers being able to provide that level of information in the required time to CIMA. Talking to a lot of my members across the spectrum, they have different business models, so whether it's an individual that's providing governance, or whether it's a larger firm at the other end, everyone is struggling with ensuring that they're utilising technology in the best way they can, to be able to actively provide that element of reporting to CIMA.



“Data protection is important no matter the size of the firm.” Leanne Golding



“It is important to automate as much as possible.”
Gwen McLaughlin

Some of them struggle with that, from a resource or cost perspective, but there have been a lot of changes for different service providers to be able to enhance that level of reporting which also ties into their reporting for their clients and for the regulator.

SMITH: We are often asked whether there is a way to standardise information that has been requested. That would ultimately be a great thing for all of us, but information is used for a variety of purposes so different data points may have to be requested.

Where technology is being extremely helpful is in how we can now slice and dice information in any way required—getting down to the nitty gritty of the information when it’s warranted. This may eventually result in fewer requests for information as we can do more with what we have.

GWEN MCLAUGHLIN: Sometimes we did not have the data in the formats CIMA was asking for. It became a huge manual exercise to collate and report this information. It highlighted that we needed to look at our onboarding, our recording of data and the use of technology to extract this data in order not to crash and burn or provide inaccurate data.

It is important to automate as much as possible to stay on top of the increased regulatory reporting requirements.

SMITH: This has been the case in respect of the changes to the AML/combatting the financing of terrorism (CFT) framework, but we are hopeful that the process of how we go about getting information will over time become less labour intensive. We also have onsite inspections and reporting forms, so there are a variety of information sources that we use.

It certainly is our objective to reduce the need for us to constantly do these intensive one-off data-gathering exercises but to instead

obtain information from regulated entities on an ongoing basis in a more seamless manner.

MARK FAGAN: When it comes to investments in technology by funds and fund managers, if someone is implementing AI, one of the biggest questions is who picks up the cost? I have funds that started using AI, but the question that faces us as directors is where does that cost go? Is it a fund cost or is it a manager cost?

Especially in the early stages when there’s huge cost and little benefit you have to consider this. Fortunately, where we’ve seen AI innovation in some of our funds, we have also seen benefits. But sometimes the costs are high and the benefits are low, so as a director you’re faced with that issue.

This also applies to other tech advances, such as trading platforms and analytical tools. Who picks up the cost: the fund or the manager?

GAUK: There have been more questions around this topic with a number of clients over the last six months. The SEC is clearly interested in governance and how such costs are allocated between the fund and fund manager. It also comes back to the expectations of investors.

The SEC as part of its routine inspections assesses cost allocations and will question the auditor as part of this process.

LEANNE GOLDING: Talking about technology and investment managers, it connects to the topic of talent management. The more innovation you have on your technology platform, whether it is AI or the use of big data in the investment process, these innovations allow your team members to focus on the more high level, analytic tasks.

The more mundane data-crunching is being done through technology. That can help with keeping people motivated.

I echo the expense issue. I had several clients who were using big data as part of the investment process and we have had to discuss what the split of costs should be between fund-related costs and costs that should be borne by the manager.

ROSSITER: That’s why you’ve seen an uptake in administrators providing some of these services—they’ve got the economies of scale. They have multiple managers gathering that information, they’re taking away the mundane, the back office, making it more efficient, making sure that it’s tying in with the portfolio management systems.

For example, making sure allocations are accurate for investors versus managers, providing transparency so that your audit is clear and you can see where it’s being allocated. Especially if you’ve got multiple funds—you may have to report to CIMA, the SEC, or the FCA. It is worth having those economies of scale across multiple clients so you can provide that kind of information for all stakeholders.

MCGIBBON: Technology started on cost optimisation but it has become more about how you improve data quality and get additional data analytics. How do we improve compliance without adding too much cost?

At EY we’re going through the same journey as the funds sector. We are looking at how we focus on those higher-level tasks, additional things where we can improve the experience of our clients.

It’s definitely an evolution, quickly moving to how we get more from data. Instead of having to be data-constrained due to availability or to not having the ability to digest and analyse larger additional datasets, you can get more data and more transparency and not have that arduous task of going through additional data.

JENKINS: What other aspects of technology are on your radar?

MARK COOK: Cyber is high on our agenda. Obviously we don't want to be targeted, and if we are targeted we don't want to be breached.

GOLDING: Investors are engaging on a regular basis with their directors on cybersecurity and technology. We also get a lot more questions from third party providers wanting to hear about how we, as the directors, are handling data. We are privy to a lot of sensitive information and it's very important that as a financial services firm we're taking that seriously and have the right protocols in place.

HAYDEN ISBISTER: I would echo that; we have seen certain law firms impacted through data leaks and information being stolen, such as the Panama Papers, which has impacted not only those law firms but also the relevant jurisdictions.

Information security has been on our radar for a number of years, but we've got various certifications for information security and some key information security personnel who we lean on heavily on these days. It's very important as a business but it's important for the jurisdiction as a whole as well.

The other big thing is around the processing and automation of information.

POWELL: In the due diligence questionnaires we're seeing, five years ago they were focused on things like your director number, your capacity and your firm infrastructure. Now, 90 percent of the questions focus on technology and data and how you are monitoring and keeping that safe.

As a service provider utilising third party providers, you need to consider who is checking that checker and review and be aware of all of the certifications your IT provider may have in place.

If you're a firm that has the resources, you can pull in your IT department or third parties to address the queries. Otherwise, it's such a red flag.

ISBISTER: The big investment banks want to know about information security, it's almost the first thing they ask these days.

GAUK: Investment managers are coming to us and they are often using multiple systems, not just locally but globally. We have shared information that crosses jurisdictions, which creates some concerns, which we address as required.

NOLAN: We're seeing more outsourcing of those functions. There are firms that can do the full suite of data protection, documentation and cybersecurity policies as well as testing. It's one thing having policies and procedures but it's another thing having those properly tested.

SMITH: It has made our work more challenging as a regulator because of the outsourcing arrangements. When you go into a licensee nowadays, you're not just looking at the licensee's physical operation, you also must think about outsourcing arrangements, possibly involving multiple other entities.

There is no drive towards having everything done here, because we recognise that we are part of a global architecture, but we're going to have to put a lot more effort into ensuring that all the bits and pieces that could potentially be impacted are being assessed on an ongoing basis by the parties who are ultimately responsible for the licensee's operations.

NOLAN: I agree, and we have to have all the proper contractual arrangements in place with everyone you're touching. If you're a data controller, you have to have proper data processing provisions in place with everyone, and it goes beyond what you first imagine would be required.

COOK: It's a contract but there's also the education around it. The lawyers will prepare the agreements but if the party that's signed up doesn't understand you still have a gap that needs to be addressed.

POWELL: I've had members ask for templates around data protection. You need to consider not just core service providers but even the likes of parties such as the shredding company and office cleaners.

They're in your office space and walking away with your boxes of



“There will be evolution and additional requirements around economic substance.”
David McGibbon



“Cayman was ahead of the curve compared to other jurisdictions.”
Allison Nolan



“Understanding what constitutes a breach is an ongoing process that needs to continue.” *Cassandra Powell*

paper—what are they seeing and what are they doing with all of this information? It’s been a very in-depth education process across the board.

MCGIBBON: That’s an interesting point, given the new data protection laws. Most of you are subject to EU GDPR but we’ve done assessments where people some previously have viewed data protection and information security as solely a technology consideration instead of a holistic exercise.

JENKINS: Does anyone see the data protection law as something that required more changes, or has it had minimal impact?

VICTOR MURRAY: It required education. People who say ‘I comply with GDPR so I don’t need to do anything’ have got it wrong.

NOLAN: It was a good precursor to have had the GDPR. By the time we came round to having our data protection law in effect, it wasn’t a surprise. In many ways it made us ahead of the game and it’s great that Cayman was ahead of the curve compared to other jurisdictions.

GOLDING: Education is a key focus, not just for our clients, but also for those of us who are in larger firms with substantial staff numbers. However, it is important to realise that data protection is important no matter the size of the firm.

MURRAY: It’s not just cybersecurity and having the right firewalls, it’s making sure that your staff appreciate and understand the data they are exposed to on a daily basis and the right protocols in place for how they protect that.

POWELL: And how to escalate any issues. Understanding what

constitutes a breach is an ongoing process that needs to continue in everyone’s day to day. It’s definitely a huge ongoing education process.

MCGIBBON: There’s also huge reputational and jurisdictional impact. It’s disastrous if there is a breach and we need to feel comfortable in our risk appetite to know that we are managing that risk.

GOLDING: You have to test your protocols if a breach happens. In this day and age, the hackers are one step ahead—as you’ve blocked one gap they’re going to try and find another one. Having the right process in place is vital so that when something happens, you know what you need to do and not panic.

FAGAN: That marries up to the education aspect because your biggest risk in cyber is the individual. The whole system might be in place but if the individual clicks on the wrong link it makes the entire system worthless. The biggest breaches have happened through human error.

SCOTT: We’re at an interesting time. If we look at the funds industry and how it evolved with new derivatives introduced first in jurisdictions like the Cayman Islands and then in heavily regulated jurisdictions, it’s the same thing with the new technology and data. Technology has been used more to create efficiency up to this point. But now we’re having to bring more technology on board because there are more requirements or regulations.

As a jurisdiction we need to see that type of technology as a competitive opportunity, and embrace it. It’s a matter of not just building technology we need now but of building innovation for the future.

We can also work on how we integrate our data, how we make it more accessible. We're going to end up developing models where we have different tiers of data: data that needs to be readily accessible to everyone in the organisation; medium-risk data available only to some, that's more protected, less accessible; and highly sensitive data that will likely be maintained offline in air-gapped systems.

By using effective sensitive data management as a strategic advantage, there's going to be a huge opportunity for the jurisdiction.

COOK: Could that technology and data be used to streamline processes so that for example, not everyone is repeatedly asking a particular investor for the same know your customer (KYC) paperwork? Maybe if you've got an approved investor that the regulator is aware of and local service providers are aware of, that authentication process could be automatic.

It would need to be updated periodically, but would stop hundreds of people asking regularly for the same documents to be sent across. That would put us ahead of other jurisdictions.

SCOTT: The Cayman Finance Innovation Lab is working on developing a digital customer due diligence ID that's going to provide that function on a regulated platform. Having organisations able to rely on that digital ID will mean standardisation and allows you to protect that data—it's not coming through on 15 different fax machines or being handled by multiple officers. It allows you then to have the right data available when it's needed for regulators.

COOK: It ties into a risk-based approach as well. If someone has been approved, then you take a different risk lens to the transactions with that party.

FAGAN: One thing to consider with security is that you can quite easily ring-fence data that is 100 percent secure, but is not very usable. It's not user-friendly. You need to have access to that data when you're on the road, for example, and as such need a balance between security and ease of use.

MCLAUGHLIN: With the increase in regulations, it has highlighted for us the importance of ensuring that our compliance resources are adequate and staff are experienced and knowledgeable in order to add the value service our clients are expecting from us.

JENKINS: What challenges and opportunities is Cayman facing as a jurisdiction?

NOLAN: Investment funds were specifically carved out of the economic substance legislation in the Cayman Islands, we were very specific on that point, and that's been a competitive advantage in Cayman.

In terms of the funds industry, there are two things: the economic substance and having to establish core income-generating activity for a whole bulk of entities. Then we've got the investment funds which are essentially exempt.

Then we've got the investment managers, that's where we've seen things shift. People had to make a decision as to whether they were going to go through the process of establishing substance or decide that it wasn't worth it.

It's been challenging from that perspective but overall, the legislation benefits the jurisdiction because we have so many firms providing, in various different ways, activities which fulfil those core income-generation activities.

POWELL: Segments of my membership have their businesses primarily on the investment management company side of things, so some of them are caught by the legislation. Some casualties will fall out of this where that's a big part of their business.

But I agree that the legislation was done for a specific purpose, to focus on Cayman's continued focus on transparency and best

practices within the regulatory framework. People need to get up to speed to know that this is now a normal part of our day-to-day lives.

SMITH: There were approximately 2,200 entities registered to provide securities investment business, including investment management services, as at the end of December 2019. CIMA is now processing the re-registration applications received as at January 15, along with any new applications to provide such services.

The relationship between investment funds and investment managers means that, if a fund chooses to stay and is connected into the manager, then the manager staying is also almost inevitable. As time progresses we see a reassessment happening among regulated entities generally, because you're having to determine the best business model for you.

POWELL: That's what we're seeing. There is some restructuring going on as a natural part of the business cycle.

SMITH: What we should be left with is the truly active business. People are reassessing and asking if they need a particular structure. Those assessments will continue.

SCOTT: Although we're tax-neutral, we are a part of the global taxation framework. We play an important role in understanding why our clients are here, how we add value to the process. The fact is that if clients don't see the added value from efficiency, professional expertise and experienced court system in the jurisdiction, then they might not be a good fit for the jurisdiction. Those are the ones who do need to be rethinking: are there different things that we can be doing here, or is there another jurisdiction better for them?

We are best suited for clients who are very efficient, who are



“It is important to make life easy for our clients.”
Tim Rossiter

using it as a tax-neutral jurisdiction that also complies with other tax jurisdictions around the world. That is the type of business model that has made us successful.

FAGAN: There have been some casualties because of the way that legislation was drafted as opposed to the fact that they were here for tax reasons. Some of those have had to close down and from that point of view, we possibly could have considered alternative options under this regulation, or possibly additional exemptions.

There are instances where there has not been tax evasion or tax avoidance, but they have been caught by the regulations, and had to close anyway.

MCGIBBON: There will be casualties and some change but I agree that the jurisdictions that strike the right balance between being forward-thinking, and having long-term appropriate regulation but without being overbearing, and when they mix that with good infrastructure, debt versus surplus, and economic stability, they will enjoy good growth.

Some other jurisdictions took a more light-touch approach, while others have a more overbearing approach, but there will be evolution and additional requirements around economic substance and some of the other regulations. I think Cayman has it right at the moment.

POWELL: What is important is ensuring that the right message is being delivered. When we all talk about various pieces of legislation we need to be on the same page and communicate the positives and our collective position as a jurisdiction.

MURRAY: It's important we are consistently known as a legitimate



“Just look how adaptive we are to all the new laws.”
Victor Murray



“There’s a hesitation to accept funds that predominantly trade in cryptocurrencies.”
Chris Gauk

business jurisdiction doing legitimate business, which we always knew anyway, but the rest of the world doesn't always seem to be aware of that.

COOK: True clarity on everything will take time. There have been so many new regulations recently introduced that it will take time to understand the structure for our business and for the industry. Once that's bedded down we'll essentially have the right type of business that what we want left here. Potential bad actors will hopefully not be here any more.

SMITH: We're having to adjust and create new frameworks while also communicating to everyone the new requirements as we ourselves are finalising and formalising the process. Cayman's use of the consultation process, where all the relevant stakeholders are at the table, is one that I don't know exists to that extent in other jurisdictions.

That whole cost:benefit analysis is critical to what we introduce. Because of the rate of change over recent years, it seems that we're onboarding a lot of new things and many are being driven internationally by the various standard-setters.

Everything we do takes into account the uniqueness of our jurisdiction and our financial services sector, and it's trying to strike that balance between agendas that are globally driven while continuing to be seen as a credible jurisdiction and yet protecting what has differentiated us to date.

NOLAN: The ability of the private sector to have its say before



“We put rules in place that are fit for purpose for the market.” *Michelle Bahadur*

legislation is finalised, to look at the draft forms and to have a voice shows real strength in the jurisdiction. It’s a real competitive advantage compared with how other jurisdictions might operate.

POWELL: The important thing for us is continuing to ensure that we get information into the hands of our members. A focus of ours has been organising education and technical discussions, getting experts to run through different scenarios.

We have also opened up many of these sessions up to the wider industry, non-CIDA members, so that they can also receive the much-needed information. We have been fortunate to have speakers from the law firms, audit firms and other key providers come in and speak to the members.

A law firm will have access to certain information and that nitty gritty granular stuff on the legal documents which is of great benefit to my members. It’s about sharing that information and promoting and protecting the jurisdiction and highlighting the services and the people we have.

NOLAN: That’s also where AIMA is key. We have the added value of having a global perspective, and having the knowledge base globally, who can then give us more insight into the trends and how figures might be received.

JENKINS: How compliant would you say your own organisations are in the context of so many new rules?

BAHADUR: We’re on the other side of the fence when we’re negotiating and dealing with international standard-setters. There are armies of people, the brightest and the best on their side, dealing with these initiatives. They are coming fast and furious,

because that’s the way the world is operating these days. They see a problem and they send an army to go and fix it. We’re having to keep up with that and respond.

We’ve been trying to keep a close connection with the industry through this, so that we can understand exactly where the concerns are. A very good example has been the recent Private Funds bill. We’ve had many working groups, we’ve spent numerous hours consulting with industry.

That’s always a challenge; it’s a balancing act but we as government appreciate all the feedback we receive and we try to make sure that it is incorporated into the legislation, although that is not always possible.

We need to work even more closely together to mitigate some of those issues that might arise from the legislation.

One other threat is that competitor jurisdictions present something that can create regulatory arbitrage, but the international bodies are looking across jurisdictions on a horizontal basis and eventually it will come out in the wash and will be stopped.

FAGAN: We’re often the first mover. It might look as though we are implementing regulation and legislation that nobody else is doing but it’s because we’re first and often others are following our lead on things.

SMITH: We receive additional scrutiny by virtue of being the biggest and, in our view, the best. The more information you have when you enter into these negotiations the better, as it helps to promote transparency and to allay concerns. The more that we know, the better we can respond.



“Where we’ve seen AI innovation in some of our funds, we have also seen benefits.” *Mark Fagan*



“Information security has been on our radar for a number of years.”
Hayden Isbister

International standard-setters will be bringing to the table expectations based on their own understanding of the best approach and thus expect to see such approach replicated by us. We have to be able to convincingly explain that, while what we have in place may not look the same as theirs, we achieve the same outcome. That’s an important conversation.

GOLDING: Given the value proposition that Cayman holds and given the talent and the breadth of skills here, this is a tremendous opportunity to show the quality of our service providers.

It is a chance to enhance the product offering, the governance, and the audit function and grab the opportunity for growth for the industry.

MURRAY: Just look how adaptive we are to all the new laws—it shows we’re very agile and capable.

SCOTT: There needs to be a mind shift around how we see ourselves as financial centres. Many years ago, jurisdictions like ourselves were considered offshore and the main focus was arbitrage between different offshore jurisdictions.

Now we play such an important role in the global economy we should no longer even be talking about ourselves as being offshore. We’re an international financial centre and with that comes responsibility. We are going to be first movers in some circumstances, but we have an obligation to see ourselves as a fundamental component of the global economy, and ensure we continue to be a leader in that space.

ISBISTER: I agree. We haven’t had any clients asking about other jurisdictions, we haven’t seen any clients leave the jurisdiction. It’s business as usual for us in Cayman. There have been changes

but the jurisdiction has handled it really well. From a legal point of view it would be nice to have a bit of stability but it’s been a really busy year.

POWELL: We’ve been hearing some chatter around Luxembourg, Dublin, Singapore, and Ontario on creating products to directly compete with the Cayman Islands. They will not have resources and the skillset, the regulatory framework, or the economic stability we have here.

We are an international financial centre, not just an offshore financial centre, and it is a case of innovating and taking the right steps and doing it the right way.

ISBISTER: I don’t see those jurisdictions offering truly global products such as those we have here. That’s a huge difference.

JENKINS: Does Cayman have the right level of talent to handle such rapid change?

ROSSITER: It does, but we can’t be complacent. We need to appreciate that the entire world is looking for talent. We’re the biggest, and the best, as evidenced by the number of funds we handle here. Underpinning that is a huge amount of expertise.

We’ve managed to keep that balance between proportionate and appropriate regulation, and not adopt the bureaucracy of places like the EU, but we need that talent to cut through the noise—to understand the regulations and communicate effectively that what we’ve implemented is resilient, proportionate and there is not too much cost, oversight, noise or bureaucratic mess.

Basically, we’re still open for business and things are going to continue with the expertise we have here.

POWELL: We need to recognise that where we’ve been putting changes and new pieces of legislation in place, there are potential opportunities. There have been some changes in the Irish regulations—does that create an opportunity for us on the AML side of things to move some of that administration back to Cayman where we have the highly skilled and capable providers?

ROSSITER: It’s not just the EU—the OECD is looking at everybody around the world. People are much more aware globally of what’s happening and the fact that we have differentiated our approach. We were the first mover and maybe we’re starting to see the benefits of that.

After all the noise, all the changes, the messaging is clear that we are still able to do business here, it still isn’t difficult—our regulator understands and is very engaged with the industry.

We’re all working towards the same thing: making sure that this jurisdiction remains a pre-eminent one. It is important to make life easy for our clients, while also making sure we’re doing things in the right way.

SMITH: With regard to talent, retention is important for us as a regulator. There are certain aspects of what we need, in terms of skillset, that are going to be unique. Once learned, it is very valuable. As long as it stays in the jurisdiction it helps to build the pool of talent locally, but maybe the challenge is more around upskilling who you have while also using technology and automation to provide the additional support.

You need to determine where to use technology and where to use human resources.

MCGIBBON: There are four generations in the workforce today, so lots of diversity. As you leverage more technology, then that changes the skillset required from those people. There is a constant need for education.

ISBISTER: There is a wealth of talent here and I agree that training

and recruiting young Caymanians is important. Our emphasis has been on that.

The generation point is an interesting one. Some of the older generation don't believe in training or technology, and that's frustrating. But all in all it's all positive picture.

POWELL: We talk about this all the time. There is no degree that you need to be a director. We have individuals in our membership who come from every aspect of financial services and beyond. It's always changing. The next generation will be different again—whether that's a lawyer, an auditor, someone who is pure governance, in this field we see individuals from all areas.

This was not an area of financial services that I knew anything about starting out, yet what we do is a central part of the whole infrastructure of what we're providing and we need to nurture and promote this.

SCOTT: In terms of talent we're entering an era where what has been best practice for many years is not necessarily going to take us forward. Being able to look at our organisations and get input from people who are generationally very different from ourselves, who are more plugged in to where the world is going, is so important.

When we look at innovation and technology and the talent we need, it's not for people like us who have gotten a bit older. It's for people who understand where it's going and have unique ideas and vision.

NOLAN: I agree that diversity is what's required. Complete diversity in every respect: age, gender and different backgrounds. For those organisations that embrace diversity, it has been found, particularly in the case of gender diversity, that it can really enhance the productivity and performance of the business.

JENKINS: To what extent are sustainability and environmental, social and corporate governance (ESG) issues coming to the fore?

MCGIBBON: Sustainability is very topical.

COOK: We can expect in our industry and within all of our clients' operations that ESG and sustainability are going to become a bigger focus. We need to ensure that everyone is in the right position to innovate their business as they move forward.

NOLAN: Every fund is now being asked to look at ESG and that's part of the due diligence process. They have to report back to the investors from that point of view, and that's been a big change.

MCGIBBON: The dynamic has changed for clients in the past year. It has gone from a public commitment for ESG and sustainability which hadn't been figured out or fully integrated to an absolute imperative. We now have a global sustainability lead and there's definite investment in that because it's not just a green agenda, it's how people do business.

GOLDING: I have seen investors demand to see an ESG policy within the next six months or they will be reconsidering their investment. In addition, it does not necessarily mean that that fund strategy has always to be through an ESG lens—that assessment is only part of it. It should include a review of their investment approach and a review of how they operate the business. The ESG approach needs to be incorporated in both investments and operations.

All of us around the table will have to have those policies in place—obviously most of us are already there. Some of the smaller practitioners may not have envisioned that they would need to have that but it's going to touch all aspects of the industry.

JENKINS: What are your thoughts on the Private Funds Act?

BAHADUR: The transitional provisions are still being finalised and those will be issued shortly.

COOK: If it hasn't already been considered, because cost is a consideration across the industry, careful thought should be given to whether we can have a small fund/large fund type cost structure.

SMITH: One of the things that has been implemented with this legislation is a codification of the risk-based approach. The risk-based approach considers factors such as size, nature of business, and the complexity of the regulated entity. The risk-based approach allows the regulator sufficient flexibility to apply a supervisory approach that takes into account the unique characteristics of the regulated entity without compromising the integrity of the overall framework and the intended objective of the provision.

Our initial objective is to get to know these private funds. The supervisory framework includes provisions for authorisation, supervision, enforcement, audit and accounting, as well as depositary requirements dealing with the identification and safekeeping of assets. Rules will also be developed to provide further clarity as to the requirements in each of these areas.

Regulation is often viewed as taking a one-size-fits-all approach but that is certainly not the approach that CIMA has taken to date or intends to take in respect of these private funds.

With regard to implementation, it's CIMA's objective to make the transition and the implementation process as seamless as possible. ■

Images by Janet Jarchow Photography



“ESG and sustainability are going to become a bigger focus.” *Mark Cook*