Cayman Islands Litigation Guide 2025 (Chambers)

Briefing Summary: The new guides provide the latest legal information on litigation funding, initiating a lawsuit, pre-trial proceedings, discovery, injunctive relief, trials and hearings, settlement, damages and judgment, appeals, costs, alternative dispute resolution (ADR) and arbitration.

Service Area: Dispute Resolution and Litigation, Restructuring and Insolvency

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1 General

1.1 General characteristics of the legal system

The Cayman Islands is a common law jurisdiction. Litigation is primarily adversarial and is conducted through both written submissions and oral arguments.

Sources of law

Sources of law include primary legislation passed by the Parliament of the Cayman Islands, secondary legislation made on the basis of authority found in primary legislation, and residual common law found in judicial precedent.

The Cayman Islands is a British Overseas Territory and, as such, the UK may, by Order in Council, extend certain laws to have effect in the Cayman Islands.

Judicial precedent

Where there is no binding Cayman Islands judicial precedent, decisions of the English courts, as well as decisions of the courts of other common law jurisdictions, are persuasive. In practice, except in areas where there is a difference in the underlying legislation or public policy, it would be unusual for the Cayman Islands courts to take a different view of the common law than the UK Supreme Court. Decisions of the UK's Judicial Committee of the Privy Council on appeals from the Cayman Islands courts are binding.

As a consequence, there are extensive areas of substantive Cayman Islands law that are identical or very similar to English law, especially in fundamental areas such as contract, tort, equitable principles, basic trust concepts, foundations of company law, and general concepts of corporate insolvency. However, there are also numerous important areas where, notwithstanding the overall kinship of the two legal systems, substantive Cayman Islands law differs materially from that of England, including, in particular, in certain specialist aspects of company and insolvency law that have developed independently to help make the Cayman Islands a leading jurisdiction for international financial services and investment funds.

Procedure

The Grand Court Rules, which govern the conduct of most high-value litigation in the Cayman Islands, mirror closely the Rules of the Supreme Court that governed High Court litigation in England prior to the introduction there in 1999 of the Civil Procedure Rules. However, the Grand Court Rules also incorporate a statement of governing principles – the Overriding Objective – which is in some respects similar to the Overriding Objective adopted in the English Civil Procedure Rules after 1999.

Insolvency proceedings are governed by their own bespoke set of Companies Winding Up Rules, which displace most of the provisions of the Grand Court Rules.

There are also separate rules for probate, matrimonial, personal bankruptcy, and small claims.

1.2 Court system

First instance

Civil matters up to the value of KYD20,000 are heard by the Summary Court, which also hears certain other matters such as affiliation, maintenance and domestic violence applications. However, the principal court of first instance for all civil matters is the Grand Court, which also hears appeals from the Summary Court and certain quasi-judicial tribunals.

The Grand Court's civil case load is broadly divided between the Civil Division, the Family Division, the Admiralty Division, and the Financial Services Division. The overwhelming majority of litigation concerned with international financial services takes place in the specialist Financial Services Division. Among other things, the Financial Services Division is the mandatory division for:

- proceedings relating to Cayman Islands investment funds;
- most trust proceedings;
- certain actions under the Companies Act (including all winding-up proceedings);
- all proceedings to enforce foreign judgments and arbitral awards; and
- most actions for breach of contract or duty by or against a professional services provider.

A particular feature of proceedings in the Financial Services Division of the Grand Court is that, ordinarily, the judge who is assigned to a matter at the outset remains assigned to it all the way until trial. Therefore, the same judge will hear all the interlocutory applications and will preside over the trial. This facilitates a high level of familiarity with the case.

Judges of the Grand Court are appointed from amongst individuals who must have the same qualifications as are required for appointment to the English High Court of Justice or courts of equivalent jurisdiction throughout the Commonwealth. They are eminently qualified and, in the Financial Services Division, possess extensive experience in financial services, corporate, and insolvency disputes.

There is no one-size-fits-all timeframe for proceedings. Everything hinges on the complexity of the issues and various other factors. Please see section **7.8 General timeframes for proceedings** below for an in-depth discussion of timeframes.

Appeal

The Cayman Islands Court of Appeal hears appeals from the Grand Court. Unlike the Grand Court, which sits throughout the year (except for a Summer and Christmas vacation when only urgent business is heard), the Court of Appeal generally sits three sessions of three weeks, approximately in April, September, and November each year, although it is possible, in certain limited circumstances and where practicable and necessary in the interests of justice, for parties to apply for a special sitting.

All judges of the Court of Appeal have previously held high judicial office for many years in the Cayman Islands, England, or elsewhere in the Commonwealth.

Appeals from the Cayman Islands Court of Appeal are heard by the Judicial Committee of the Privy Council in London.

1.3 Court filings and proceedings

All originating process documents filed with the Grand Court – such as writs, originating summonses, originating motions and petitions – are placed on a public register.

Other documents filed by the parties in court proceedings – such as summonses, pleadings, affidavits, witness statements, and skeleton arguments – are placed on the court file relating to the relevant proceeding. This file is not open to public inspection by default. However, any member of the public may apply to the court for permission to inspect or take a copy of any document on the court file.

A party to proceedings may apply to the court for an order that any document or part thereof filed with the court should be sealed from the public. Such sealing orders are not made lightly and require proper justification. However, in appropriate circumstances, the court can and does seal sensitive documents, and the court is highly experienced in dealing with sealing applications.

Insolvency proceedings

In respect of documents filed with the court in insolvency proceedings, the default position is that, in addition to the company's liquidator, the entire court file may be inspected by:

- any former liquidator or controller of the company;
- any person who was a director or professional service provider of the company immediately before the commencement of liquidation;
- any person claiming in writing to be a creditor or contributory of the company; and
- in cases of regulated businesses, the Cayman Islands Monetary Authority.

Any other person may inspect the court file by special leave of the court.

The court may, having regard to the overriding principle that justice should be done, order the sealing of a document on the court file of an insolvency proceeding for a specific period of time or until the happening of a specified event (usually the final dissolution of the company). However, it must be shown that the information in question is confidential and will not enter the public domain unless the document is filed with the court and the publication of this information will harm the economic interests of the creditors or contributories of the company. Any document sealed on this basis may be unsealed on the application of the liquidator, creditor, or contributory.

Trials and winding-up petitions are generally heard in open court, unless the court directs, for some special reason, that they should be heard in chambers. Interlocutory summonses, both in insolvency proceedings and in general litigation, are usually heard in chambers, unless the court directs a hearing in open court. Proceedings in chambers are generally considered private, although the judge may allow members of the public to attend.

The courts are guided by the principle of open justice but are also prepared to conduct hearings (or parts of hearings) in private where this is properly justified.

1.4 Legal representation in court

Natural persons may represent themselves and conduct court proceedings as litigants in person. However, save in exceptional circumstances, companies must always be represented by an attorney-at-law.

Only persons admitted to practice as attorneys-at-law in the Cayman Islands have unrestricted rights of audience before the courts. The legal profession in the Cayman Islands is not divided between solicitors and barristers in terms of rights of audience, as is the case in England. All local attorneys have equal rights of audience.

Foreign lawyers

Foreign lawyers have no rights of audience and cannot conduct cases before the Cayman Islands courts. To the extent that foreign lawyers are engaged to act in connection with Cayman Islands proceedings, their fees will not generally be recoverable from the losing party as disbursements (save where they are engaged to give an opinion on a point of foreign law) or as part of an award in respect of attorney fees, save where costs have been awarded on the indemnity basis (see **11.2 Factors considered when awarding costs**). However, this is only a rule of thumb: the court has a wide discretion, when it comes to the taxation of costs, to direct that any item of work be allowed, disallowed, restricted or qualified.

However, a foreign lawyer may be granted "limited admission" to appear before the Cayman Islands courts for the purposes of a specific proceeding, if instructed to do so by a local attorney. In principle, such limited admission may be granted to any suitably qualified overseas senior advocate and, in practice, it is regularly granted to English King's Counsel in proceedings that are sufficiently complex or high value to justify the appointment of such expert advocates. Junior counsel and solicitors might be granted "limited admission" in only very unusual circumstances.

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2 Litigation funding

2.1 Third-party litigation funding

On 1 May 2021, the Private Funding of Legal Services Act, 2020 (the Act) came into force in the Cayman Islands. The Act repealed any distinct offences under the common law of champerty and maintenance and provided for third-party funding agreements to be used in civil litigation without court sanction, subject only to a small number of formalities and well-defined conditions.

The law on third-party funding had previously developed incrementally to a point where it was fairly common outside of winding up proceedings; however, placing funding agreements on a statutory footing is a welcome development.

2.2 Third-party funding: lawsuits

Even prior to the introduction of the Act, third-party funding of liquidations (with court sanction) had been fairly common for some time, and third-party funding of non-insolvency proceedings was gradually becoming more common. It is anticipated that large institutional funders will become much more active in the jurisdiction over the coming years.

2.3 Third-party funding for plaintiff and defendant

There is no specific rule of law preventing a defendant from obtaining third-party funding. However, third-party funders normally seek to fund claims rather than defences, since claims are most likely to offer opportunities to make a profit. Defendants are therefore unlikely to be able to procure third-party funding without a counterclaim of sufficient merit and value to justify investment by a third party.

2.4 Minimum and maximum amounts of third-party funding

This depends on the particular third-party funder.

2.5 Types of costs considered under third-party funding

In principle, funding may be secured for any type of costs.

2.6 Contingency fees

Save in certain limited circumstances, the Act also permits contingency agreements between clients and attorneys. This is true whether or not the contingency fee agreement includes a success fee, and a success fee can (subject to relevant caps on recovery discussed below) be a function of either costs incurred or recoveries in the action.

Where a contingency fee agreement provides that an attorney is entitled to a success fee, the success fee must not exceed more than 100% of the attorney's normal fees. In addition, in the case of claims sounding in money, the total of any success fee payable by the client to the attorney must not exceed one third (33.3%) of the total amount awarded or any amount obtained by the client as a consequence of the proceedings (excluding costs).

Where a contingency fee agreement involves a percentage of the amount or of the value of the property recovered, the amount to be paid to the attorney must not exceed one third (33.3%) of the value of the property (save where a joint application is made to the court).

These caps may be varied by joint application to the court, depending on factors such as the nature and complexity of the proceedings, the expense or risk involved or any other relevant factors. The court will not, however, approve any contingency fee exceeding 40% of the total amount awarded, of any amount obtained by the client or of the value of any property recovered.

2.7 Time limit for obtaining third-party funding

There are no formal time limits. In practice, it is wise to consider the possibility of third-party funding from the outset. However, a third-party funder is unlikely to commit until the case is developed to a stage where a meaningful assessment of merits and prospects of recovery can be undertaken. In appropriate cases, some funders will agree to advance "seed capital" required to progress investigations and/or the legal analysis to the point where a meaningful assessment of the merits and prospects of recovery can be undertaken.

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3 Initiating a lawsuit

3.1 Rules on pre-action conduct

Save in judicial review proceedings (in respect of which there is a pre-action protocol), the court does not impose any rules of pre-action conduct on the parties. The Grand Court has indicated that pre-action protocols in respect of personal injury, clinical negligence, defamation and repossession proceedings will be published in due course.

However, the parties should remember that the court has considerable discretion on the issue of costs and may well take pre-action conduct into consideration.

3.2 Statutes of limitations

Limitation periods are prescribed by statute (Limitation Act (1996 Revision)) and vary depending on the nature of the claim. Claims under contract expire six years after the date of breach. Claims under a specialty (including a deed) expire 12 years after the cause of action arises, unless a shorter period of limitation is otherwise applicable. Tort claims have a six-year limitation period, which usually commences on the date the damage is incurred. However, for personal injury, libel and slander, the time limit is three years. Actions for sums recoverable under a legislative provision must be started within six years from the date when the sum became due. Claims for recovery of land can be commenced up to 12 years from the date when the right accrued (or 30 years if the claim is against the Crown).

In certain circumstances, limitation periods can be extended or abrogated altogether. For example, if the right of action has been deliberately concealed from the claimant by the defendant or if there has been acknowledgment of the debt or part payment, the limitation period may be extended.

Limitation periods do not apply at all in claims by a beneficiary against a trustee for fraudulent breach of trust or the recovery for trust property. In all cases, aside from limitation, claims might also become barred through delay ("laches"). In claims against companies, limitation stops running if a winding-up order is made in respect of the company. Special limitation rules apply to some claims available to company liquidators. It is also possible for parties to enter into standstill agreements to pause limitation periods while settlement negotiations are ongoing.

3.3 Jurisdictional requirements for a defendant

The basis of jurisdiction is primarily territorial and is generally founded on valid service of proceedings within the jurisdiction. As such, a person residing in the Cayman Islands or a company incorporated there may generally be sued in the Cayman Islands courts as of right, provided service of process is duly effected. However, it is potentially open for such a defendant to argue that the Cayman Islands courts should decline to exercise their jurisdiction over the claim in favour of a foreign court that is clearly and distinctly the more appropriate forum (forum non conveniens).

Jurisdiction agreements and service outside the Cayman Islands

The Cayman Islands courts will also generally accept jurisdiction over disputes that fall within an express jurisdiction agreement between the parties designating the Cayman Islands courts as the forum. Jurisdiction may also be established if a defendant voluntarily submits to the jurisdiction of the Cayman Islands courts by other means, for example by taking a substantive step in the proceedings (other than by disputing jurisdiction).

Jurisdiction may also be established over defendants residing or registered outside of the Cayman Islands if the court grants leave to serve the originating process outside of the Cayman Islands (see **3.5 Rules of service**).

3.4 Initial complaint

Writ of summons

Generally, a civil lawsuit is commenced by filing and serving a writ of summons. The writ may be indorsed with the full statement of claim from the outset. However, this is not mandatory and the writ may also be issued indorsed with a concise statement of the nature of the claim and the relief sought. In the latter case, the statement of claim must be filed as a separate pleading at a later date.

Originating summons

Other specialist modes of commencing proceedings are also available, and, in some cases, they are mandatory.

For example, proceedings that are not expected to involve any substantial dispute of fact, such as where the plaintiff seeks declaratory relief in relation to issues of pure contractual interpretation or interpretation of law, may be commenced by an originating summons, which invokes a simplified procedure to trial. The originating summons must set out the statements or questions on which the plaintiff seeks determination or the relief sought. It must also identify the causes of action.

Insolvency proceedings

Insolvency proceedings must be begun by petition. The petition must set out:

- the particulars of the company's incorporation;
- a description of its business (including a statement about the countries in which it is carried on);
- a concise statement of the grounds upon which the winding-up order is sought; and
- the name and address of the qualified insolvency practitioner nominated for appointment as official liquidator.

Form and procedure

In all cases – writ of summons, originating summons, or petition – the relevant court rules prescribe standard forms that serve as a template.

Both a writ of summons and an originating summons have an "expiry date" in that, having been filed, they must then be served upon the defendant within a certain period. This period is six months from the date of issue where leave for service out of jurisdiction is required and four months in all other cases. Unless served within these time periods (or unless validity of the document is extended by order of the court), validity of the originating process document will expire, necessitating the filing of a fresh writ or originating summons. This could have significant consequences if a limitation period expires in the meantime.

In general, originating process documents may be amended. A writ may be amended without leave of the court before it is served on the defendant. After service, a writ may be amended without leave once at any time before the pleadings are deemed to be closed, provided the amendment does not consist of adding, omitting, or substituting a party, altering the capacity in which a party is sued, or adding or substituting a new cause of action (these types of amendments require leave).

Once pleadings have closed (or, before pleadings have closed, if the plaintiff wishes to amend for a second time), the plaintiff requires leave of the court to amend the writ. The court has wide discretion over all such amendments. The same rule applies to originating summonses or other originating processes.

3.5 Rules of service

Service of originating process is the responsibility of the plaintiff.

Within the jurisdiction, natural persons must generally be served by personal service. Companies registered in the Cayman Islands may be served by delivery to their registered offices in the Cayman Islands. If proceedings are brought under a contract which specifies how originating process is to be served, then service can be effected in accordance with those provisions.

In cases where genuine difficulties arise in effecting service, a plaintiff may apply to the court for leave to serve by an alternative method, which may include by email, fax, or newspaper advertisement. Permission to serve by alternative means is not given lightly, but it can be obtained in appropriate cases.

Service outside the Cayman Islands

Subject to limited exceptions, leave of the court is required to serve proceedings outside the Cayman Islands. To obtain leave, the plaintiff must:

- satisfy the court that it has a good cause of action;
- identify the country where the defendant may be found;
- specify the proposed method of service and show that it is in accordance with the law of the country where it is proposed to be effected;
- satisfy the court that the Cayman Islands is the most appropriate forum; and
- identify and meet the requirements of one of the "gateways" for service out of jurisdiction.

Order 11, Rule 1 of the Grand Court Rules specifies a number of potential jurisdictional gateways for service outside of the Cayman Islands. Given the international nature of the businesses formed in the Cayman Islands, arguably the most pertinent of these gateways is the one that permits service out where the claim is against a current or former director, officer or member of a Cayman Islands company or a partner of a Cayman Islands partnership and concerns that company or partnership or the status, rights or duties of the relevant director, officer, member or partner in relation to that company or partnership.

Other significant gateways permit service out on a defendant who is a necessary or proper party to a suit already commenced or to be commenced, or where:

- the claim concerns a contract made within the jurisdiction or governed by Cayman Islands law;
- the claim concerns a trust governed by Cayman Islands law;
- the claim is brought to enforce any arbitral award; and
- the claim is brought in respect of a breach of contract committed in the Cayman Islands or in respect of a tort, fraud or breach of duty where the damage was sustained or resulted from an act committed in the Cayman Islands.

3.6 Failure to respond

The defendant has 14 days from service of the writ (longer if service is outside of the Cayman Islands) to file an acknowledgment of service with the court. If the statement of claim was indorsed on the writ, the defendant then has another 14 days from the time limited for acknowledging service of the writ to file and serve a defence. If the statement of claim was not indorsed on the writ, then it must be filed and served within 14 days of the filing of the acknowledgment of service and the defendant has a further 14 days from service of the statement of claim to file its defence.

The consequences of failing to file an acknowledgment of service vary depending on the nature of the claim.

If the writ is indorsed with a liquidated demand only, failure by the defendant to acknowledge service of the writ and state an intention to defend will entitle the plaintiff to enter final judgment for the principal amount claimed, interest, and fixed costs.

If the claim is for unliquidated damages, the plaintiff may enter an interlocutory judgment against the defendant for damages to be assessed.

Other consequences apply for specialist proceedings, such as claims in detinue, possession of land, and mixed claims.

Similar consequences flow where the defendant does acknowledge service of the writ and indicates an intention to defend, but fails to file a defence on time.

Judgments entered against the defendant in default of acknowledgment of service or in default of defence are liable to be set aside or varied by the court. In practice, this is only likely to occur if the defendant re-engages in the proceedings and satisfies the court that setting aside or varying the judgment is appropriate.

In general, the defendant's failure to engage with the legal process will not prevent a plaintiff from obtaining relief. Such failure may, however, have consequences for the enforceability of any resulting judgment in other jurisdictions, but that is a matter of the local law of the relevant foreign jurisdiction.

3.7 Representative or collective actions

There is no formal class action process of the sort that is common in the USA. However, if a number of plaintiffs all wish to bring the same claim, a representative action by one plaintiff on behalf of the group is possible where all members of the group share a common interest and grievance (though there is currently no concept of a Group Litigation Order as envisaged under the English CPR 19).

Orders made in such proceedings are binding on all members of the group. However, they cannot be enforced against non-parties, unless the court orders otherwise.

3.8 Requirements for cost estimate

There is no requirement to provide clients with a cost estimate.

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4 Pre-trial proceedings

4.1 Interim applications/motions

The courts have wide powers to make a variety of interim orders and the parties often make a wide variety of interim applications. These include but are not restricted to case management issues.

Examples of interim applications and orders that might be made include:

- requests and orders for further and better particulars;
- specific discovery applications;
- interim injunctions;
- freezing orders;

- anti-suit injunctions;
- summary judgments;
- disposals of the case on a point of law;
- striking out of pleadings; and
- judgments in default of acknowledgment of service or defence.

4.2 Early judgment applications

Summary judgment

Both the plaintiff and the defendant can apply for summary judgment on the other party's case under the provisions of Order 14 of the Grand Court Rules. For the plaintiff, this can be a way of securing early final judgment on the merits. For the defendant, this can be a means of disposing quickly of a weak claim.

The court must be satisfied that the claim or the defence has no real prospect of success and there is no other reason why the case should go to trial. The application may relate to the whole or only a particular part of the claim or defence, and in the latter case, if successful, that part will be struck out.

In the case of an application by the claimant, it is possible to secure summary judgment on liability, with the claim for damages proceeding to trial. In the case of an application by the defendant, summary judgment may also be obtained if the court is satisfied that the plaintiff has no prospect of recovering more than nominal damages.

Application for summary judgment is made by summons and supported by an affidavit verifying the facts on which the claim (or the defence) is based. The affidavit must state the affiant's belief that there is no defence to the claim or, as the case may be, no defence except as to the amount of damages. The respondent to the application must show cause against it by affidavit or otherwise to the satisfaction of the court.

Summary judgment procedure is not normally appropriate for instances where there is a substantial factual dispute between the parties. The court will not conduct a mini-trial.

Upon hearing the application, the court may strike out the claim or the defence, in full or in part, and enter judgment for plaintiff or defendant accordingly. Where the court dismisses the summary judgment application, it may allow the action to proceed either unconditionally or on such terms as it sees fit.

Striking out a pleading

A related but distinct jurisdiction exists under Order 18, Rule 19 of the Grand Court Rules for the court to strike out or amend the whole or part of any pleading in a case. Such strike out is possible if the court is satisfied that the pleading:

- discloses no reasonable cause of action or defence;
- is scandalous, frivolous or vexatious;
- may prejudice, embarrass or delay the fair trial of the action; or
- is otherwise an abuse of process of the court.

Such strike out may have the consequence of the action being stayed, dismissed, or judgment being entered accordingly.

Disposal of a case on a point of law

Finally, under Order 14A of the Grand Court Rules, the court has the power to dispose of the case on a point of law or construction of a document. The court may do so where the question is suitable for determination without a full trial and such determination will fully determine (subject only to any possible appeal) the entire claim or any issue within it.

4.3 Dispositive motions

There is a variety of dispositive motions that can be made before trial. They include applications for:

- judgment in default of acknowledgment of service or defence (see 3.6 Failure to respond);
- summary judgment (see 4.2 Early judgment applications);
- disposal on a point of law (see 4.2 Early judgment applications);
- strike out (see 4.2 Early judgment applications); and
- jurisdictional challenge.

A defendant must launch any jurisdictional challenge within the time limited for service of defence (Order 12, Rule 8 of the Grand Court Rules). If the challenge succeeds, the court will decline jurisdiction and the proceedings will end. If the challenge fails, the claim will proceed, but the defendant will be granted further time to file a further acknowledgment of service and to serve a defence in due course.

There are a variety of potential grounds for challenging jurisdiction, including:

- an irregularity in the writ or service thereof;
- an irregularity in any order giving leave to serve the writ out of jurisdiction;
- an irregularity in any order extending the validity of the writ for the purpose of service; and
- forum non conveniens.

4.4 Requirements for interested parties to join a lawsuit

Interested parties not named in a lawsuit may intervene in it with leave of the court. The party wishing to join must apply for joinder and support its application by an affidavit explaining its interest in the matters in dispute (Order 15, Rule 6 of the Grand Court Rules).

The court may grant the application if:

- the joinder of the proposed intervener is necessary to ensure that all matters in dispute are effectually and completely determined; or
- the matter raises an issue between the proposed intervener and any party to the matter which the court considers it would be just and convenient to determine between the intervener and the party at the same time as between the parties.

4.5 Applications for security for defendant's costs

A defendant (including a defendant to a counterclaim) can apply for an order that the plaintiff must pay a sum of money as security for the defendant's costs. Security may be ordered, if the court thinks it just to do so, in a variety of circumstances, including where the plaintiff:

- is ordinarily resident outside the jurisdiction and the defendant is likely to incur additional costs in enforcing any costs awards against the plaintiff or where there is a real risk of non-enforcement of any costs award;
- has failed to state its address in the writ or stated it incorrectly;
- changed its address during the course of proceedings in order to evade the consequences of litigation;
- has no business or assets in the jurisdiction;
- is a Cayman Islands company which, there is reason to believe, has insufficient assets to pay the costs of the defendant should the defendant succeed at trial; or
- is a nominal plaintiff (other than one suing in a representative capacity) suing on behalf of another person and there is reason to believe that that person will be unable to pay costs of the defendant.

If one of the criteria is met, the court may make an order for security. There could be a variety of circumstances and reasons why the court might refuse to do so. For example:

- if the plaintiff's impecuniosity was caused by the defendant's actions;
- if an order for security for costs would stifle a meritorious claim; or
- delay in making the application.

4.6 Costs of interim applications/motions

The usual rule on costs is that they follow the event: ie, the loser pays. However, the court has wide discretion on the question of costs and can make a variety of alternative orders.

In general, the rule is no different in relation to the costs of interim applications. However, there are some exceptions. For example, the costs of any application for an extension of time are normally borne by the applicant, unless the court orders otherwise.

Further, there are some procedural applications and hearings, such as case management hearings and pre-trial reviews, where the usual court practice is not to identify "winners" and "losers" but to order costs to be in the cause.

In the absence of an order for earlier payment, the default position on when interim application costs will fall to be paid is that all such costs will, unless they are agreed earlier by the parties, be assessed and become payable after the conclusion of the case. However, the court does have jurisdiction to order interim payment on account of costs in an amount to be assessed summarily, in which case such payment may be due within a reasonable time after the order is made.

4.7 Application/motion timeframe

The timeframe for the court to deal with a particular application will depend on the complexity of the application and the availability of court time.

The parties are required to indicate a time estimate for the hearing of their applications when filing them with the court. In light of the time estimate, the court fixes the hearing of the application based on judicial availability as well as the availability of the parties' respective counsel.

Depending on the indicated hearing time estimate, different schedules for the filing of evidence and submissions will apply. Applications estimated to take no more than three hours of hearing time are known as "ordinary" applications and the standard timetable for their disposal envisages evidence in answer within 14 days of the application, evidence in reply within seven days of that, and the filing of skeleton arguments and hearing bundles not later than three business days before hearing. This implies a lead time to hearing of at least 24 days from application. Applications with a longer estimated hearing time are deemed "lengthy" and have a more extended timetable.

In practice, the timetable may be abridged by agreement of the parties. Furthermore, while these timetables should always be followed (and failure to do so may well incur, at the very least, the disapprobation of the judge), strictly speaking, they have the force of guidance and settled practice rather than the force of court rules and they may be departed from in cases where a more urgent hearing of the matter is properly justified. In principle, an application may be issued and served on the respondent with as little as four days' notice of the hearing (Order 32, Rule 3(2) of the Grand Court Rules), while an application for an extension of time may be served with just one day's notice (Order 32, Rule 3(1) of the Grand Court Rules). However, while strictly within the rules, the party making an application on such short notice may need to be prepared to justify the urgency and the need to depart from the guideline timetables for exchange of evidence. In those circumstances, adjournment of the hearing at the request of the respondent (and cost consequences) is a risk.

Therefore, the timeframe for hearing can vary very widely. A simple application on a discrete issue, for example for extension of time, might be heard within a matter of days. A complex application, such as a challenge to the court's jurisdiction or for strike-out or summary judgment on a significant case, may well require several days' worth of hearing time and might not be heard for several months.

However, the court always strives to accommodate truly urgent ***ex parte*** applications for freezing orders, injunctions, appointment of provisional liquidators and the like on an expedited basis. Such truly urgent applications can be heard within a matter of days or, in exceptional cases, even hours, provided the court is satisfied of the urgency.

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5 Discovery

5.1 Discovery and civil cases

Documentary discovery

The parties have an ongoing discovery obligation, which arises at the close of pleadings. At that point, each party must serve on the other a list of all documents that are or have been in the party's possession, custody or power and are relevant to any issue in the proceedings.

The test of relevance in the Cayman Islands is wider than standard disclosure in England and includes any document that tends to support or undermine either party's case, including "train of enquiry" documents (this is sometimes referred to as the *Peruvian Guano* test). Documents are understood to include anything that is capable of recording or storing information. After lists are exchanged, each party can inspect and take copies of the documents on the other party's list (save for documents over which privilege is asserted).

If a party is dissatisfied with the level of discovery given, it can make specific discovery applications seeking particular documents or categories of documents.

Outside of specific discovery applications, request-based conceptions of discovery found in, for example, arbitrations and under England and Wales Practice Direction 51U, are not recognised in the Cayman Islands.

Discovery by oral examination

In principle, discovery is also available by oral examination, although this is a tool that is seldom used. The court may order such discovery, on the application by a party, if the court is of the opinion that discovery by oral examination is necessary for disposing fairly of the cause or matter or for saving costs.

Oral examination takes the form of a cross-examination under oath, which is transcribed by the court reporter. The transcript can be used at trial, including during cross-examination of witnesses.

5.2 Discovery and third parties

Discovery against third parties is available under the well-known Norwich Pharmacal jurisdiction in respect of third parties innocently or otherwise mixed up in the wrongdoing by the defendant (or potential defendant).

5.3 Discovery in this jurisdiction

For the general approach to discovery and the applicable rules see **5.1 Discovery and civil cases**.

A particular aspect of discovery in the Cayman Islands is that financial services litigation, in particular, often calls for discovery of documents that might be said to contain information confidential to the disclosing party's clients or former clients. This can make the process of reviewing documents for discovery particularly time-consuming and might also require the disclosing party to make applications under the Confidential Information Disclosure Act, 2016, so as to ensure that the giving of discovery does not constitute an actionable breach of confidence.

5.4 Alternatives to discovery mechanisms

This is not applicable in this jurisdiction.

5.5 Legal privilege

Cayman Islands law on legal privilege mirrors English law in this area and recognises the following main categories of privilege.

- Legal advice privilege, which applies to confidential communications between the legal advisor and their client made for the purpose of giving or receiving legal advice.
- Litigation privilege, which applies to confidential communications between a client or legal adviser and a third party, which came into existence after litigation started or was contemplated, for the dominant purpose of giving or receiving legal advice or preparing evidence in connection with that litigation.

In addition to the heads of privilege outlined above, "without prejudice" privilege may arise in the context of communications created in a bona fide effort to settle a dispute.

If the party considers a document to be relevant but privileged, it must still list it in its list of documents (albeit listing by category description is generally accepted), but it is not required to allow the other party to inspect the document or take copies of it. Documents may be redacted where they are partially privileged. In principle, a claim to privilege over a particular document may be challenged in court, but this is not a straightforward undertaking.

5.6 Rules disallowing disclosure of a document

A party is not required to disclose a document if it would tend to incriminate that party or if disclosure of the document would be detrimental to the public interest.

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6 Injunctive relief

6.1 Circumstances of injunctive relief

A wide variety of injunctive relief may be obtained from the Cayman Islands courts, including the following.

- Freezing orders (both domestic and worldwide) are available, both in aid of proceedings in the Cayman Islands and in aid of foreign court and arbitration proceedings. A freezing order restricts a party's ability to deal with its own assets in order to prevent the improper dissipation of those assets before judgment, and it is usually coupled with an asset disclosure order to help the plaintiff identify the respondent's assets and police the freezing order.
- Prohibitory and mandatory interim injunctions, including proprietary injunctions, are likewise available. Prohibitory injunctions restrain a party from taking a particular step, whereas mandatory injunctions require it to take specific action.
- Anti-suit injunctions, which restrain foreign legal proceedings, may be obtained.

In certain circumstances, injunctive relief may be granted without notice to the respondent. However, the respondent always has a right to have the matter heard inter partes at the earliest convenient date.

6.2 Arrangements for obtaining urgent injunctive relief

If the urgency is genuine and properly explained to the court, an application for injunctive relief may be heard and granted the same day.

6.3 Availability of injunctive relief on an *ex parte* basis

Injunctive relief is available on an ***ex parte*** basis. Indeed, this is the usual basis on which freezing injunctions are granted. However, once the relief is granted ***ex parte***, the respondent will have an opportunity to challenge the order at an inter partes hearing.

Whenever injunctive relief is granted ***ex parte*** the applicant is under the strict duty of full and frank disclosure to the court. This is an obligation to disclose to the court fully and fairly all matters, whether factual or legal, that are material to the applicant's position (including adverse matters). Failure to give full and frank disclosure at the ***ex parte*** hearing may lead to the injunction being discharged inter partes regardless of the substantive merits.

6.4 Liability for damages for the applicant

It is a condition of obtaining a freezing injunction that the applicant must undertake to compensate any losses suffered by the respondent if it is later ruled that the injunction should not have been made.

In certain circumstances, the court may order for this undertaking to be fortified by the applicant providing security. In any event, the applicant should expect to have to disclose to the court information relevant to its ability to honour the undertaking in damages.

6.5 Respondent's worldwide assets and injunctive relief

Injunctive relief is available against the assets of the respondent both in the Cayman Islands and worldwide.

A worldwide freezing order may be granted where the value of respondent's assets in the Cayman Islands is unlikely to meet the value of the applicant's claim. However, the court will often require the applicant to come back to obtain permission before enforcing the freezing order in a foreign jurisdiction.

6.6 Third parties and injunctive relief

A freezing order may be effective against third parties, depending on its terms. For example, an "extended definition" freezing order, which encompasses the respondent's assets held on its behalf by third parties.

Moreover, third parties who knowingly assist the respondent in violating the freezing injunction will be in breach of the freezing injunction.

6.7 Consequences of a respondent's non-compliance

A respondent who breaches a freezing injunction is at risk of being found in contempt of court. This can have a variety of consequences that are prejudicial to the respondent, including, in the most serious cases, committal of a natural person to prison.

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7 Trials and hearings

7.1 Trial proceedings

Trials are adversarial in nature. The role of the judge is to adjudicate on the parties' competing factual and legal cases, rather than to conduct an inquisitorial procedure on the judge's own account. This is not to say, however, that the judge is restricted to the role of a passive observer (see **7.7 Level of intervention by a judge**).

Trials are conducted orally, with each side presenting oral arguments and cross-examining witnesses live in front of the presiding judge. It is usual to have opening and closing oral submissions summarising the case.

However, trials are preceded by the submissions of extensive written pleadings, witness statements, and expert reports, upon which subsequent oral arguments and cross-examinations are based. Sometimes, trials might begin with the filing of written opening submissions and end with the filing of written closings, but this depends on directions agreed by the parties or ordered by the judge in each case. The exact procedure is flexible and will be influenced by the complexity and volume of the issues.

7.2 Case management hearings

Typically, there are at least two procedural hearings in a civil claim of any complexity.

Unless the parties agree directions to trial, in every proceeding there will be a directions hearing (usually after close of pleadings) at which the court can consider and set down the directions (including as to timing) for the subsequent conduct of proceedings until trial. This may include a variety of matters, such as:

- discovery;
- timetable for any pleading amendments;
- service of witness statements and expert reports;
- procedure for listing the trial;
- timing of trial bundles and skeleton arguments; and
- provisions for any pre-trail review.

In most cases of any complexity, there will also be a further procedural hearing called the "pre-trial review". This is usually set for a date four to eight weeks before the trial itself and is intended to ensure that all preparations for trial are on track.

7.3 Jury trials in civil cases

Civil cases are decided by a single judge sitting alone. In theory, a defendant in a civil case may request trial by jury under Section 21 of the Judicature Act (2021 Revision). However, the court will only order such trial where it considers the matter to be one that may be properly tried in that way. That would be an exceptional case.

7.4 Rules that govern admission of evidence

Rules on admissibility of evidence are found in Sections 42–56 of the Evidence Act (2021 Revision) and in Order 38 of the Grand Court Rules. The approach in the Cayman Islands is similar to the approach in England pre-1999 and the guidance notes in the UK Rules of the Supreme Court 1999 (White Book) are a useful reference point. In general, the approach is inclusive. In particular, hearsay evidence is admissible, subject to appropriate notice being given. However, the nature of the evidence and the circumstances under which it was obtained will be relevant to the weight (if any) that the court attaches to it at trial.

7.5 Expert testimony

Expert testimony may be presented at trial by the parties if the court so directs or all the parties agree. Directions for preparation and exchange of expert reports are usually made as part of directions to trial (whether agreed or made at a directions hearing). Those directions may also set out the questions on which the expert is to report. The parties will usually cross-examine each other's experts at trial.

The court also has the power to appoint its own expert on the application of any party. If appointed, the court expert provides their report to the court and the parties and may then be cross-examined by the parties with leave of the court. Unless the court orders otherwise, the parties are jointly and severally responsible for the fees of the court expert.

In practice, it is usually the parties rather than the court that appoint the experts. Whether appointed by the court or by the parties, an expert's overriding duty is to help the court on matters of their expertise and this overrides any obligation the expert might have to the party instructing or paying them.

7.6 Extent to which hearings are open to the public

Trials are typically held in open court and are open to the public. Interlocutory hearings are typically held in chambers, but the court has the discretion to admit members of the public. See **1.3 Court filings and proceedings**.

7.7 Level of intervention by a judge

The judge does not have an inquisitorial function. The judge listens to the oral submissions of the parties, and to the testimony of witnesses and experts, considers all the relevant written materials, documents, and legal arguments and renders a judgment on that basis.

This does not mean that a judge is required to be passive during the trial. The level of intervention depends on the individual preferences of a given judge. Many judges do intervene to ask questions of advocates and even of witnesses and experts. However, while there are always exceptions to the rule, those interventions are normally aimed at clarifying a particular point of evidence or argument rather than at pursuing a self-standing train of enquiry.

7.8 General timeframes for proceedings

Many of the procedural steps, such as the filing of pleadings and the giving of discovery have standard time limits prescribed in the Grand Court Rules. However, in practice, in cases of any real complexity, those time limits are almost invariably extended by agreement of the parties. In any event, there are many other procedural steps, such as exchange of witness statements, expert reports, and the like which do not have any deadlines prescribed in the Grand Court Rules.

As such, there is no one-size-fits-all timeframe for proceedings. Everything hinges on the complexity of the issues, the volume of discovery, the number of witnesses, the need for expert evidence, the availability of the judge, and, indeed, on the parties' respective strategies in terms of expediting or delaying resolution.

The most that can be said is that, even under a best-case scenario, any financial services or commercial claim of reasonable complexity and value that is commenced by writ is unlikely to get from issue of proceedings to trial quicker than nine months. A timeframe of up to two years would not be unusual for more complex claims. In extreme cases, proceedings can last for many years, but this is not common.

In terms of the duration of the trial itself, again, there is no standard trial length. It depends on the number of witnesses and experts who need to be cross-examined. It also depends on how much time the parties need to present their case in oral submissions and to sum up at the end, which in turn depends on the complexity of the legal and factual issues.

That said, few trials would last less than a week. Any commercial trial of any complexity, and especially trials involving allegations of fraud or breach of fiduciary duty, are unlikely to take less than three weeks. In particularly complex cases, trials lasting for many weeks and sometimes months are not unusual. A recent major fraud trial in the Grand Court lasted over a year and resulted in a judgment running to over 1,000 pages.

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8 Settlement

8.1 Court approval

Except in the context of insolvency proceedings (where liquidators sometimes require court sanction for settlement), or in cases where one of the parties is not of full capacity, court approval is not needed to settle a lawsuit.

8.2 Settlement of lawsuits and confidentiality

There is no difficulty with keeping the terms of the settlement confidential.

Keeping the fact of the settlement confidential could be difficult if, as is usually the case, one of the parties wishes to have an order dismissing proceedings entered on the court file. Such an order would usually be publicly accessible.

8.3 Enforcement of settlement agreements

As a matter of Cayman Islands law, settlement agreements are contracts like any other and are enforced accordingly.

To the extent the parties might have chosen to embody the terms of settlement in a court order, they can be enforced in the same way as any other order of the court.

8.4 Setting aside settlement agreements

As with any other contract, a party seeking to set aside a settlement agreement will need to seek this relief on one of the usual bases on which contracts can be avoided or declared void, such as misrepresentation, mistake, illegality, duress or other applicable doctrine.

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9 Damages and judgment

9.1 Awards available to the successful litigant

The plaintiff specifies the relief it seeks in its writ and statement of claim. Following a full trial, the court may award a variety of relief, ranging from damages to a final injunction or an order for specific performance. Declaratory rulings may also be issued. Equitable remedies of rescission and rectification are also available. Account of profits, restitutionary remedies, and proprietary remedies (including any necessary tracing) are also available.

In the context of insolvency litigation, winding-up orders are available and, where the petition is presented by contributories on a just and equitable basis, also a variety of alternative remedies, such as a buy-out of shares or directions as to the future conduct of the company's affairs.

9.2 Rules regarding damages

In general, the approach to damages is compensatory rather than punitive. In principle, aggravated or exemplary damages might be available, for example in certain patent or tort claims, but this is rare. There is no statutory limit on damages.

9.3 Pre-judgment and post-judgment interest

Interest may be awarded both before and after judgment pursuant to Section 34 of the Judicature Act (2021 Revision) and the Judgment Debts (Rates of Interest) Rules (as revised from time to time). The applicable rates of interest vary depending on the currency of the judgment debt.

9.4 Enforcement mechanisms of a domestic judgment

The most common forms of enforcement are:

- writ of fieri facias (seizure of assets).
- garnishment of money owed to the judgment debtor by a third party;
- charging orders over assets;
- winding-up proceedings; and
- appointment of a receiver.

9.5 Enforcement of a judgment from a foreign country

Except for Australian judgments, which are subject to a statutory enforcement regime under the Foreign Judgments Reciprocal Enforcement Act (1996 Revision), foreign ***in personam*** judgments are enforced under the common law.

In order to be enforced, the foreign judgment:

- must be final and conclusive (noting that the existence or possibility of an appeal does not affect the finality of the judgment);

- must have been issued by a court that had jurisdiction over the person against whom judgment was given in that the person was present in the foreign country, was claimant (or counterclaimed) or voluntarily participated in the foreign proceedings (other than to contest jurisdiction), or otherwise submitted to the jurisdiction of the foreign court by conduct or agreement; and
- must not have been obtained by fraud or be against public policy.

Although most judgments that are enforced are money judgments, certain non-money judgments may also be enforced in appropriate circumstances.

The foreign judgment is enforced by issuing a writ suing on the judgment debt. The court will not typically re-hear the substantive dispute behind the foreign judgment and, accordingly, the enforcement claim is usually suitable for expedited determination by summary judgment. Once a Cayman Islands judgment is entered on the enforcement claim, it is enforceable by the same means as any other domestic judgment.

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10 Appeal

10.1 Levels of appeal or review to a litigation

Appeals from the Grand Court lie to the Cayman Islands Court of Appeal. Further appeals lie to the Judicial Committee of the Privy Council in the UK.

10.2 Rules concerning appeals of judgments

Appeals from final judgments of the Grand Court generally lie as of right. Appeals from most interlocutory decisions require permission, which may be obtained from the Grand Court or, if refused, from the Court of Appeal. To obtain permission, the would-be appellant must show that the appeal has a realistic (as opposed to fanciful) chance of success.

10.3 Procedure for taking an appeal

If leave to appeal is not required, a notice of appeal must be filed and served within 14 days of the date on which the judgment or order being appealed from was filed.

In cases where leave to appeal is required, leave should be sought orally at the handing down of the judgment in the Grand Court. Failing that, leave can be sought from the Grand Court in writing within 14 days of the decision. If leave is then granted by the Grand Court, a notice of appeal must be filed within 14 days of the date on which the judgment or order being appealed from was filed. If the Grand Court refuses leave, it can be sought from the Court of Appeal ***ex parte*** within seven days from the date of the Grand Court's refusal and the application is usually decided by a single judge of appeal.

Appeals from the Court of Appeal to the Judicial Committee of the Privy Council may be brought: (i) as of right; (ii) with leave of the Court of Appeal; or (iii) with special leave from the Judicial Committee of the Privy Council itself. Where leave is sought from the Court of Appeal, it should be sought, on notice to the other parties, within 21 days of the date on which the Court of Appeal's decision was filed.

10.4 Issues considered by the appeal court at an appeal

The appeal court has jurisdiction to consider appeals on matters of law, fact, and the exercise of discretion by the first instance judge. However, the appeal court will be slow to overturn a judge's findings of fact (especially if they were made following a trial where witnesses were cross-examined). The appeal court is also reluctant to interfere with the judge's exercise of discretion, unless it:

- is so unreasonable as to fall outside the generous ambit of discretion allowed to a judge;
- resulted from the judge misdirecting themselves as to the applicable principles; or
- took into account irrelevant factors and failed to take into account relevant factors.

10.5 Court-imposed conditions on granting an appeal

The court may impose conditions such as the payment of security.

10.6 Powers of the appellate court after an appeal hearing

The appeal court may affirm, set aside, or vary any order of the lower court. It may also order a new trial. The appeal court may make orders as to costs and interest.

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11 Costs

11.1 Responsibility for paying the costs of litigation

See **4.6 Costs of interim applications/motions**.

11.2 Factors considered when awarding costs

The court has wide discretion when awarding costs. The parties' conduct in the litigation, including any payments into court or offers of settlement may be taken into account.

The usual costs award is on the standard basis, which means that costs will only be allowed to the extent they are proportionate to the issues involved, were reasonably incurred, and were reasonable in amount, with any doubts that the taxing officer may have on these issues resolved in favour of the paying party.

If costs are awarded on an indemnity basis, all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred (and any doubts which the taxing officer may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party). This tends to lead to a higher proportion of cost recovery. However, indemnity basis costs are rarely awarded and usually require a finding that a party behaved improperly.

11.3 Interest awarded on costs

Interest is payable on costs and runs from the date of the costs order. It is calculated according to the rates set out in the Judgment Debts (Rate of Interest) Rules.

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12 Alternative dispute resolution (ADR)

12.1 Views of ADR within the country

Mediation is gaining traction as a method of ADR in the Cayman Islands. However, it remains relatively uncommon for large commercial disputes to be resolved by ADR.

12.2 ADR within the legal system

Save in respect of certain proceedings issued in the Family Division of the Grand Court, ADR is not made compulsory by the court system. There are no prescribed sanctions for unreasonably refusing ADR. However, as the court has a wide discretion in considering cost awards, it is conceivable that it might be persuaded to take unreasonable refusal of ADR into account in appropriate circumstances.

Further, in a recent development in August 2022, the Grand Court introduced Practice Direction No 3 of 2022, which provides that a matter, including a Financial Services Division matter, may be referred to judicial mediation by the court at any stage in the proceeding. It remains to be seen how this new Practice Direction is implemented in practice, but it underlines the increasing importance that ADR is likely to play in the future.

12.3 ADR institutions

The Cayman Islands Association of Mediators and Arbitrators (CIAMA) promotes the use of mediation (and ADR generally) in the Cayman Islands.

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13 Arbitration

13.1 Laws regarding the conduct of arbitration

For a detailed treatment of the subject of arbitration in the Cayman Islands, please see the Cayman Islands Law and Practice chapter in the Chambers International Arbitration Guide 2024.

Domestic arbitration is governed by the Arbitration Act, 2012. Enforcement of foreign arbitral awards is governed by the Foreign Arbitral Awards Enforcement Act (1997 Revision).

13.2 Subject matters not referred to arbitration

Most matters are arbitrable. One significant exception is matters related to insolvency.

13.3 Circumstances to challenge an arbitral award

The award may be appealed on a point of law. In addition, the award may be set aside on the basis that the tribunal lacked jurisdiction as well as on the basis of certain serious procedural irregularities and on the basis that the award is contrary to public policy.

13.4 Procedure for enforcing domestic and foreign arbitration

Both domestic and foreign arbitration awards must be converted into a Grand Court judgment before then being enforced like any other judgment of the court. In either case, the enforcement application is made ***ex parte*** by originating summons. The respondent will have 14 days after being served with the enforcement order to challenge it and, if the respondent does so, enforcement will not be possible until the challenge is determined.

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14 Outlook

14.1 Proposals for dispute resolution reform

An August 2022 amendment to the Companies Act and Companies Winding Up Rules introduced changes to the restructuring regime in the Cayman Islands. Directors of companies can now apply for a restructuring officer to be appointed without the need for the presentation of a winding-up petition. This has the benefit of helping the company restructure more expediently whilst avoiding any negative press associated with the appointment of a provisional liquidator.

The commencement of Parts 1 and 2 and Sections 99 and 101 of the Legal Services Act came into force on 14 October 2022. Broadly, these sections encompass the establishment of a legal council that will be responsible for the regulation of attorneys-at-law in the Cayman Islands and the enabling of Cabinet to make regulations. This will pave the way for the eventual repeal of the Legal Practitioners' Act, which is due to be replaced by the Legal Services Act.

14.2 Growth areas

There are no specific growth areas for commercial disputes. The Cayman Islands continues to be a significant jurisdiction for the resolution of global financial services sector disputes.

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