



CAREY OLSEN

Cayman Conversations – Part Three

Bernadette Carey and Chris Duncan talk with Richard Lewis at FFP

Service area / [Trusts and Private Wealth](#)

Legal jurisdictions / [Cayman Islands](#)

Date / [June 2020](#)

Carey Olsen (CO): Thanks for carving out some time during this very busy period to chat with us, Richard. It is a huge cliché, but we really are living in very unusual times. We know that a large part of your job to date has involved meeting with both private and institutional clients around the world, who regularly require your assistance on the ground with them. How have the new restrictions, both on travel and basic human interaction, impacted on your ability to investigate and advise on contentious issues – including allegations of fraud or insolvencies? Are you relying more on new technologies to perform your role in active cases (whether that is as trustee, director or liquidator) or were you already well set up to carry out these roles remotely from Cayman?

Richard Lewis (RL): The Covid-19 situation has obviously been a terrible situation globally, and we have all had to adapt in a number of different ways – personally and professionally. To answer your question, and purely from an operational perspective, it has given us a good opportunity to fully utilise our remote working infrastructure, and the results so far have been really good for our team. Because of the size and complexity of the cases we work on, we already had excellent existing IT systems and cloud storage arrangements in place prior to the lockdown but we took the opportunity to accelerate some IT upgrades to ensure home working arrangements could operate smoothly with enough capacity. A number of our team members travel extensively so the infrastructure was tried and tested, but it has been great to see the rest of the team able to rely on it. We've had a pragmatic approach to

our team's working arrangements for some time and they have the flexibility to work remotely if they need to be somewhere other than the office, so the enforced working from home was fairly seamless – we're also a relatively tech savvy team and that has helped us adapt quite quickly to change. We're very lucky in Cayman to have solid IT infrastructure and connectivity, and so were well prepared for this new style of working. Our IT service providers have been excellent as well.

On the client-facing side of things, we've found the new case management technologies available to us to be working really well: for example, we're working on a large scale discovery exercise which has involved the use of artificial intelligence to assist a team of reviewers working remotely across the globe, and that interface has worked flawlessly. One interesting side effect of the lockdown, and one that I wasn't expecting at all, has been that we've had more face to face communication with our clients than previously. Many of our meetings are now taking place via video, whereas previously they would have taken place by phone only. This is not only cutting down back and forth email correspondence, but I feel that it has improved the relationships we have with the clients and advisors we work with as we're also more able to build a better social connection with some face time.

CO: Our experience, so far at least, is that we haven't seen much financial distress creeping into our clients' structures but we are far from the finish line in terms of being able to

OFFSHORE LAW SPECIALISTS

BERMUDA BRITISH VIRGIN ISLANDS CAYMAN ISLANDS GUERNSEY JERSEY
CAPE TOWN HONG KONG LONDON SINGAPORE

[careyolsen.com](#)

determine the long term impact of recent global events. Do you proactively monitor your clients' structures for solvency, and if so how is this best done? If you identify that solvency may be about to become an issue, what sort of steps do you take?

RL: When the curfews and restrictions began, and it became clear to us that we were in a very unique global situation, the first thing we did after temporarily shutting our offices was to assess how the chaotic and constantly changing situation around the world might impact our team and the work required of them. We were also quick to put out some guidance for our team so that they could think about the types of issues we might see arising as the situation evolves. What I would say is that, in the immediate aftermath, we did not see a lot of significant change in our active matters and structures. But, as we've gained some clarity about where the world might be headed, we've seen caution creep in and an increased need in some quarters to, for example, delay and defer payments such as interest payments and other operating costs in circumstances where markets and businesses have ground to a halt. I'm sure that will continue in the short term.

Even before the pandemic, because the majority of our matters are complex or involve elements of distress we monitored our structures for solvency very closely and we continue to do so. We are starting to see some more obvious consequences now, a few months in, and we're having more detailed discussions about things like values of assets, fees, and future plans. I would expect that to continue for a while yet. Where solvency is becoming an issue, our job is to actively manage that alongside other stakeholders and to identify what is needed both practically and from a legal and regulatory standpoint.

"We are starting to see some more obvious consequences now, a few months in, and we're having more detailed discussions about things like values of assets, fees, and future plans. I would expect that to continue for a while yet."

CO: *We have a number of trust restructuring exercises on the go for clients around the world, which we had been working on for some time prior to the commencement of Covid-19 restrictions. Some are continuing on unaffected, while for others the restructuring of companies forming part of family structures and the buying and selling of certain types of assets has become more urgent. Are you seeing any greater stress on or change within the structures you manage?*

RL: We are definitely seeing more cost-conscious beneficiaries and our clients (or people connected to the structures we manage) are starting to look more closely at their rights and their ability to enforce wealth structures. Areas that seem particularly subject to stress at the moment are real estate and retail – we've already been involved in quite a few deals for our active structures where we've been instructed to sell real estate in hard fought negotiations. My experience in those areas is that brokers are desperate to cling onto existing buyers but there are questions as to whether agreed prices are still realistic – my guess is that this is going to be a real issue for structures which develop an urgent need to divest properties. Things become even more complicated when we have regulatory bodies or governmental agencies with an interest in the sale, so the process can become quite complex.

Of course, the flipside is that people and structures in good positions will take advantage of the situation and perhaps even find a way to benefit from it by altering their own personal circumstances. In terms of wider change, I wouldn't be surprised to see a greater influx of high net worth people here in Cayman in the long run. It's obviously a good option for lots of people considering a move or a second home, given the proximity to the US, the high standard of living and the health care and education options on offer here. We've also proved we can do a good job of working through very difficult times remotely from Cayman, thanks to the infrastructure here.

CO: *We have also been monitoring some of our more contentious matters from a human behaviour standpoint – with a few notable exceptions where we are dealing with particularly egregious conduct, we have generally seen our clients pivoting to a more slow and cautious approach to litigating trust disputes, with a greater focus on avoiding the costs of litigating their disputes by exploring alternative outcomes. Are you seeing anything similar, or is it the case that you are seeing parties becoming more entrenched in their positions and willing to litigate towards a win?*

"Given the current economic climate, we've seen some of the parties we work with becoming more cognisant of the value of their assets as a form of long term lifeline and some are pivoting to a more aggressive protectionist approach."

RL: Given the current economic climate, we've seen some of the parties we work with becoming more cognisant of the value of their assets as a form of long term lifeline and some are pivoting to a more aggressive protectionist approach. In these circumstances, information is key; if we can get the right

Continued

information to the right people at the right time, we can generally ensure there are sensible discussions taking place and avoid disputes escalating and positions becoming entrenched to the detriment of everyone involved. If one or more of the parties has limited access to information or if the parties aren't properly briefed or advised, the situation can result in a wholesale falling out and the correspondence or litigation can be never-ending. This is something that advisors in Cayman are generally really good at helping us to avoid – they appreciate just how far a practical discussion with opposing counsel can go toward saving on pain and fees in the long run.

"One more interesting development we are seeing is that the family disputes we are involved in are generally being led by the adult children or "next generation" rather than the parents (as was the case in years gone by)."

One more interesting development we are seeing is that the family disputes we are involved in are generally being led by the adult children or "next generation" rather than the parents (as was the case in years gone by). In matters with connections to the Middle East and the Far East, we are also seeing female members of the family taking a more active interest in their wealth management and their rights as social norms and traditions evolve in that part of the world – allowing greater access to justice to parties to whom information or rights have previously been greatly restricted. This is a really positive development, particularly in the private client world.

CO: *From your perspective, are there any "hot spots" for disputes (whether geographically or in terms of subject matter) at the moment? We have seen a few family fall-outs, and we anticipate we might begin to see a few more enquiries around investment losses in the not too distant future (similar to what we saw in Cayman after the global financial crisis in 2008). What sort of factors influence you and your clients in terms of making the decision to litigate disputes here in Cayman?*

RL: My guess is that the Middle East, and Saudi Arabia in particular, will be the next litigation hot spot largely for some of the reasons I have already discussed. Life is changing in that part of the world with increased taxes and greater rights for women. In these areas, education is increasing so the next generation are better informed and willing to fight for their rights. The Far East will also be interesting following the huge increase in private wealth coupled with tumbling economic output which will put strain on businesses and wealth structures. We'll probably also see a general increase in cross-border disputes, both in the private client space and more generally in the commercial litigation arena, particularly as we

begin to see revenue issues in the aftermath of the pandemic.

"We'll probably also see a general increase in cross-border disputes, both in the private client space and more generally in the commercial litigation arena, particularly as we begin to see revenue issues in the aftermath of the pandemic."

From a Cayman Islands perspective, the ability to progress litigation through a well-functioning and modern system is a real factor in favour of litigating here. The Court has been quick to adopt hearings via Zoom, now accepts the submission of electronic hearing bundles, and allows barristers to appear remotely. In terms of how the pandemic may change litigation in the future, I think we may see certain aspects of cost decreasing. We've proved we can be efficient and effective in preparing for and conducting litigation from Cayman using virtual meetings instead of travelling to face to face, and I think the need for business travel more generally will reduce in the long run. We will still need the human, in-person connection in many cases but I think change has arrived and we are already embarking on a new way of litigating offshore.

As a postscript, I would also say that recent developments in Hong Kong could see a significant shift in moveable wealth away from that jurisdiction. Business and wealth management may move regionally to Singapore, but people will also relocate globally. There's a lot of potential for trust restructuring which will be driven by the more mobile next generation of families.

CO: *Global change is definitely continuing – even beyond the Covid-19 situation - and it has been great to hear your insights into both the short term and long term impact of that change. Thanks again for passing on your thought -provoking analysis and forecasts.*

Continued



FIND US

Carey Olsen
PO Box 10008
Willow House
Cricket Square
Grand Cayman KY1-1001
Cayman Islands

T +1 345 749 2000
E cayman@careyolsen.com



FOLLOW US

Visit our trusts and private wealth team at careyolsen.com



PLEASE NOTE

'Carey Olsen' in the Cayman Islands is the business name of Carey Olsen Cayman Limited, a body corporate recognised under the Legal Practitioners (Incorporated Practice) Regulations (as revised). The use of the title 'Partner' is merely to denote seniority. Services are provided on the basis of our current terms of business, which can be viewed at [www.careyolsen.com/sites/default/files/TermsofBusiness.pdf](http://careyolsen.com/sites/default/files/TermsofBusiness.pdf)

CO Services Cayman Limited is regulated by the Cayman Islands Monetary Authority as the holder of a corporate services licence (No. 624643) under the Companies Management Law (as revised).

This briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen 2020.