

The overall trend of globalisation, a desire for diversification and a positive economic cycle are making businesses in Latin American look for opportunities available outside their home markets. In doing so, many have found Cayman structures to be ideal for servicing their global ambitions and demands, greatly facilitating their expansion into the global flows of commerce and capital.

The increasing importance of Cayman structures for Latin American businesses

by Marco Martins and Maria Pia Buchi

Due to a combination of factors, including a highly regarded legal system based on the English common law regime, prudent regulation, a long standing connection with leading businesses in Latin America and a large network of high quality, expert corporate and financial know-how, the Cayman Islands have historically been the jurisdiction of choice in Latin America. Not only does Cayman offer the proper infrastructure, being a stable international financial centre with good political climate and dedicated service providers, it is also OECD white listed and a member of IOSCO.

Particularly in the context of Latin America, the Cayman Islands offer a variety of structures for businesses that wish to gain access to international markets. The establishment of funds for Brazilian managers wishing to go abroad and for investors abroad wishing to invest in Brazil, the incorporation of corporate subsidiaries for treasury functions, the establishment of trusts for succession and wealth planning and the use of Cayman companies for a range of operational and financing structures, from debt and equity financings to joint ventures to special purpose vehicles are just a few examples of Cayman's sophisticated products.

Investment funds

Leading investment managers in Latin America have for many years used Cayman structures to offer international investors access to local asset classes. More recently, as income in the key regional economies has continued to grow, local investors are also showing an appetite for global investments, creating a demand for Cay-

man vehicles on the outbound side as well as on the inbound side.

In Brazil in particular, as the country continues its path of stable and strong economic growth, the Brazilian investment funds industry has also continued to experience significant growth, and in 2010 was considered the sixth fastest growing in the world¹. As capital continues to flow into these investment funds, Brazilian managers are also looking abroad for opportunities to diversify their portfolios and offer their investors access to international markets and asset classes. Given that historically Brazilian fund managers of all sizes have come to know and trust the Cayman investment vehicle, the Cayman Islands is uniquely placed to take advantage of this growth in the globalization of the Brazilian investment market.

Whereas Brazil may be the largest funds market in Latin America, the positive economic trends of greater wealth and a desire and need to diversify globally are also driving fund managers to other countries in the region, such as Peru, Chile, Argentina, Mexico and Colombia. Differences in the regulatory structures and markets of Latin American economies make it inaccurate to portray the particular developments in the Brazilian regulatory framework, which are driving a new generation of Brazilian managers abroad as a model for all of the other countries in the region, especially given Brazil's particularly high interest rates. However, growth in Latin America as a whole means that both institutions and private individuals throughout the region are experiencing a corresponding increase in appetite to grow their wealth and diversify their investments. A growth in both domestic and foreign investment means that both local and international invest-

ment managers are looking to create offshore funds dedicated to investment in Brazilian and other Latin American assets.

Offshore structures are ideal for servicing this demand, and as noted in the first part of this article, the Cayman Islands have tended to be the jurisdiction of choice for participants in Brazilian (and broader Latin American) investment. In addition to the strong reputation and high level of expertise available in the jurisdiction described earlier, Cayman has a number of selling points especially relevant to investment funds. These include the fact that Cayman Islands funds can be set up efficiently, quickly and at a low cost, and that they are not restricted in terms of the kinds of funds in which they can invest and their returns are not subject to additional tax.

Operational and financial structuring

As the worlds' leading emerging economies continue to integrate into the global financial and commercial networks, Latin American businesses are increasingly looking at opportunities to expand their operations and to tap into global sources of funding and business. Cayman vehicles offer such businesses an excellent mechanism with which to structure such global expansions.

With a combination of a modern and trusted legal framework, sophisticated expert intermediaries and service providers and low cost, Cayman's vehicles, whether an exempted company, an exempted limited partnership or a unit trust, offer businesses and investors a range of options in structuring their transactions. Cayman Islands' tax neutrality environment allows businesses to routinely establish offshore subsidiaries to fulfill



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a wide range of corporate group functions at low cost and great efficiency.

Recent changes to the Cayman Islands' Companies Law aim to provide increased flexibility and clarity and also to codify some existing practices under common law. The changes to the Companies Law are designed to address client and market-driven issues that have arisen in practice, enhance the attractiveness of the Cayman Islands to the international financial community, and at the same time strengthen the existing environment of legal certainty and commercial focus that the jurisdiction currently offers. The changes impact a number of areas of the law, from segregated portfolio companies to merger provisions.

One particular change which may be of interest to Latin American businesses is that from now on the surviving company in a merger can now be an overseas company. This brings Cayman in line with other jurisdictions, which previously allowed cross-border mergers and consolidations of this kind, and should be a simple and effective mechanism of merging corporate enterprises.

In Latin America, the steady and significant growth of the Brazilian economy has attracted a global audience keen to participate in this evolution. With both the World Cup and the Olympics in the next five years, the country faces a very significant need for investment and development, and Cayman structures, as they have elsewhere, can serve as the bridge between international investment capital and local investment opportunities. Elsewhere in Latin America, countries such as Chile, Peru, Colombia, Mexico and others have also enjoyed long periods of economic growth.

Cayman Island trusts

With most Latin American countries experiencing a positive economic cycle, there is also growing potential for the use of Cayman Islands' trust structures for succession and wealth planning purposes for high net worth individuals with assets outside Latin America. Trusts offer a number of advantages, including the ability to more effectively protect assets and ensure privacy, as well as enabling for a more efficient form of estate planning and transmission of wealth. Cayman trusts are also widely used in corporate financing transactions, where the shares of a special purpose vehicle are vested in a trustee who then exercises voting rights in relation to such financing transaction.

Conclusion

All the above constitute the reasons why the Cayman Islands have established themselves as the leading jurisdiction of choice for Latin American businesses and why Cayman is of increasing interest in these countries. In response to this demand a number of Cayman-based service providers including Harneys have established dedicated Latin America client service teams. In the case of Harneys, this team consists of Portuguese and Spanish speaking lawyers who come from top law firms in Europe, the United States and South America. Harneys' Latin America team works out of the firm's Montevideo, Cayman Islands and London offices and also includes a permanent representative in Brazil. Through this dedicated team Harneys aims to offer incomparable high quality legal and corporate services to clients in Latin America.

BIO: AT A GLANCE

Marco is head of the Harneys' Latin America practice and a partner in the firm's Investment Funds Department and he presently splits his time between the Cayman Islands and Montevideo. Marco's practice encompasses all aspects of corporate, banking and finance related disciplines, with a particular focus on the establishment and restructuring of investment funds. He speaks fluent Spanish, Portuguese and Italian.



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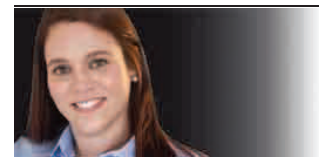
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BIO: AT A GLANCE

Maria's role involves working with Harney's clients, market participants and Brazilian intermediaries to help explore and implement offshore solutions. Her expertise spans the areas of investment funds, trusts and the use of special purpose vehicles for financings. Maria is a qualified Brazilian lawyer who previously served as in-house counsel at Triscorp Investimentos and Opus Gestao de Recursos.



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ENDNOTES

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