

It does not take long for a visitor to the Caymans to realise that the 1993 film *The Firm* still arouses the ire of those in the Cayman financial sector. Even today in certain circles Cayman is synonymous with money laundering and other financial misdeeds. Others however recognise that Cayman is far from the world's money laundering haven and is in fact exploited by fraudsters because of its record of political and financial stability.

Money laundering and financial crime: The Cayman Islands in a global perspective

by Richard Horowitz

Cayman is certainly a financial success. A February 2010 International Monetary Fund paper entitled *Cross-Border Investment in Small International Centers* reported that Bank for International Settlements statistics "indicate that banks resident in the Cayman Islands held over \$1.7 trillion in assets at the end of 2008 (more than Italy, Portugal and Spain combined)." And the March 2010 *Global Financial Centres Index* ranked Cayman as 28th in the world, tied with Edinburgh and Seoul and right ahead of Dublin, Hamilton and Munich.

Despite its negative image in certain circles, it is telling to review material where Cayman is found to be unremarkable or is not found at all.

A simple check of indexes of relevant books shows that the Cayman Islands is not listed in *The Money Launderers: Lessons From The Drug*

Wars-How Billions of Illegal Dollars Are Washed Through Banks & Businesses (1992), *Washed in Gold: The Story Behind the Biggest Money Laundering Investigation in US History* (1994), nor in the recently published *Infiltrator: My Secret Life Inside the Dirty Banks Behind Pablo Escobar's Medellin Cartel* (2009). Other significant books make little reference to Cayman. (See Sidebar 1)

Nor, for example, is the Cayman Islands mentioned in the International Monetary Fund's 2009 report entitled *Ponzi Schemes in the Caribbean*, which discusses seven other Caribbean islands. Even the one hundred forty page report entitled *Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management* compiled in 1999 by the President's Working Group on Financial Markets (consisting of the Treasury Department, the Federal Reserve, the SEC and the Commodity Futures Trading Commission) mentions





Cayman several times only because LTCM, headquartered in Connecticut, consisted of partnerships in Delaware and the Cayman Islands. Cayman though was mentioned only in the context of bankruptcy and other legal strategies and not in connection whatsoever of wrongdoing on the part of any Cayman entity or person, a theme which repeats as this issue is researched.

And the NGO Global Witness' 2009 report *Undue Diligence: How Banks Do Business With Corrupt Regimes* discusses numerous Caribbean and European countries but has nothing to say about Cayman.

In fact, despite its image problem, no Cayman entity or person has been responsible for any of the major and newsworthy financial crimes in years. While these major cases have been widely reported and the institutions heavenly fined, contrasting them with cases where the Cayman Islands has been implicated is telling.

In 1999, the Bank of New York was found to have laundered \$7.5 billion in Russian money. In 2000 a BoNY vice president plead guilty to the laundering and in 2005 BoNY settled the matter with the Justice Department. Other fines in 2005 – Riggs Banks for conducting transactions for former Chilean dictator Augusto Pinochet and for Equatorial Guinea's ruling family, the New York branch of Jordan's Arab Bank for failure to maintain proper AML practices and ABN AMRO for improperly supervising its North American Regional Clearing Center for processing approximately 20,000 transactions valued at \$3.2 billion using shell companies in the United States, Russia and other former Soviet Union countries

In 2007, the Russian customs service sued Bank of New York for lost revenue on the aforementioned laundered money and the parties reached an agreement in 2009, where among other things, BoNY paid Russian customs \$14 million.

After a two-year investigation in 2009, US and New York authorities fined Credit Suisse and Lloyds for conducting illegal transactions for Iran. Both banks deleted information from wire transfer documents to hide their Iranian origin and advised Iranian banks on how to avoid detection. Credit Suisse was found to have conducted 7,000 illegal transactions amounting to \$700 million and fined for assisting the Iranian banks and other institutions like Iran's Atomic Energy Organisation and its Aerospace Industries Organisation to facilitate.

Lloyds was found to have made \$300 million of Iranian transfers and another

\$20 million worth of Sudanese transfers. Its employee training manual even contained a section on how to conduct these illegal transactions.

In addition to the Lloyds-Credit Suisse and Iran matter, a 17 July 2008 Senate Investigations Subcommittee report entitled *Tax Haven Banks and US Tax Compliance* focused on UBS and LGT. In this well-known case, UBS agreed to pay a US government fine after one of its private bankers, Bradley Birkenfeld, resigned in 2005 and informed the US government that UBS had assisted thousands of US citizens in evading US taxes. The Subcommittee Report cited UBS' estimate that it held in Switzerland 1,000 accounts of US citizens which have been declared to the IRS and 19,000 accounts which have not, these totalling \$17.9 billion.

The second part of this report dealt with the information revealed by former LGT employee Heinrich Kieber, now in hiding, who copied LGT files showing how it assisted 1,400 clients from numerous countries to evade taxes and provided them to several governments, first to Germany. Within a month the United States, Germany, the United Kingdom, Italy, France, Spain, and Australia Canada, New Zealand, Sweden were investigating the material provided by Kieber.

In March 2010, Wachovia Bank agreed to pay a fine for AML violations regarding improper due diligence of transactions involving Mexico. For example, from 2004 to 2007 Wachovia processed over 2 million wire transfers amounting to approximately \$374 billion on behalf of 13 Mexican correspondent customers without proper AML controls. And in May 2010, Italian police announced they are investigating 7,000 account holders from HSBC Holding's Swiss private bank after a former Geneva-based HSBC employee turned over a list of 127,000 accounts belonging to 80,000 people to French officials. (See Sidebar 2)

Individuals as well as institutions have been in the news. In 2008, Hernan Arbizu, a native Argentinean and vice president of JP Morgan Chase's Latin American unit based in New York was indicted for fraud. While at JP Morgan, Arbizu, a former UBS private banker, pretended to his UBS clients that he continued working at UBS and with the help of a willing accomplice at UBS sent documents with forged client signatures to UBS in order to transfer money to certain clients' from the accounts of other clients. He was caught trying to send a UBS client money

SIDEBAR 1

References to the Caymans in Relevant Books

The Secret Money Market: Inside the Dark World of Tax Evasion, Financial Fraud, Insider Trading, Money Laundering, and Capital Flight (1990): 6

The Laundrymen: Inside Money Laundering, the World's Third Largest Business (1996): 5

Transnational Criminal Organizations, Cybercrime, and Money Laundering: A Handbook for Law Enforcement Officers, Auditors, and Financial Investigators (1999): 6

Crime School: Money Laundering: True Crime Meets the World of Business and Finance (2004): 3

Dirty Dealings: The Untold Truth About Global Money Laundering, International Crime, and Terrorism (2006): 3

SIDEBAR 2

Significant penalties and fines

UBS – \$780 million

Credit Suisse – \$536 million

Lloyds – \$350 million

Wachovia – \$110 million

ABN AMRO – \$80 million

Riggs Bank – \$41 million

The Bank of New York – \$38 million

The Arab Bank – \$24 million

SIDEBAR 3

Californian Congressman Brad Sherman (March 17, 2009):

"Now we're focused on the bonuses being paid to the croupiers of this AIG casino . . . Now all that money is in the hands of the executives. No doubt they have got them in Cayman Island accounts as we speak."

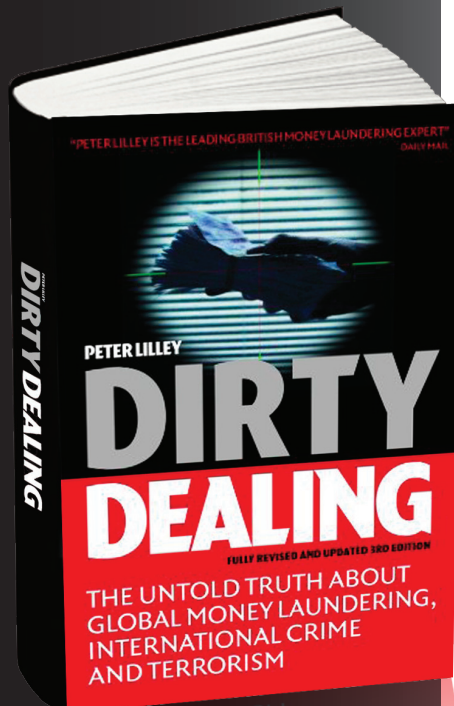
Minnesotan Congresswoman Amy Klobuchar (February 26, 2008):

"I want to see an administration that aims for fiscal responsibility by eliminating offshore tax havens for multimillionaires so people aren't hiding money in the Cayman Islands."

SIDEBAR 4

Jack Blum on the Cayman Islands, Senate Investigations Committee, July 24, 2008:

"I listened to the comments about Uglad House and must say to you that Uglad House represents the best of offshore, because Cayman Islands actually keeps better records than most of the other jurisdictions and has fewer corporations. If you really want to worry about things look at the British Virgin Islands with 500,000 corporations, no records on any wall, you can't go to a place and find an office because there is none, and no regular records to find out who currently owns the corporation. You can go to the Island of Nevis and you won't even be able to find an address for the corporation. There are no Nevis nominee shareholders, directors, officers, if you were to take those people send them to Guantanamo and waterboard them you couldn't find out who owned the corporation or what the corporation was doing."



from a client's account at JP Morgan.

Salah Ezzedine a Lebanese businessman, was arrested in Lebanon in 2009 and charged of conducting a one billion dollar pyramid scheme. There is no need to detail the Madoff and Stanford Ponzi schemes.

But after all, the Cayman Islands does have its history with money laundering and other financial improprieties. Arrested in 1975, Frank Lucas, the drug dealer who monopolised the Harlem drug market in the 1960s and 1970s and played by Denzel Washington in the 2007 film American Gangster, had an estimated \$52 million in Cayman banks (though at the time money laundering was not a crime in the United States nor in Cayman). Called Operation Coast, from 1981-1993 the South Africa apartheid regime tried to develop biological and chemical weapons in contravention of the Biological and Toxins Weapons Convention with their principal companies for this effort incorporated in the Caymans.

In recent years, the Senate Finance Committee held a hearing on 24 July 2008 entitled The Cayman Islands and Offshore Tax Issues. The Wall Street Journal of 30 September 2008 published an article written by former Manhattan District Attorney Robert Morgenthau entitled "Too Much Money Is Beyond Legal Reach". Morgenthau cited Long Term Capital Management, two collapsed Bear Stearns hedge funds and BCCI as all being chartered in the Caymans.

Senator Carl Levin who chairs the Senate Investigations Subcommittee entered this article into the Congressional Record two days later.

Estimates are that Enron established between 400 and 700 subsidiaries in the Caymans. Parmalat's books showed a balance of \$3.9 billion in the account of its Cayman subsidiary which in fact was empty. And much has been made of the Uglad House beginning in March 2004 with an article published in Bloomberg Market entitled "The 150 Billion Shell Game." North Dakota Senator Byron Dorgan stated from the floor of the Senate on 12 April 2010 that Uglad House "in 2004 was the official home to 12,748 corporations . . . since that time, since 12,748 corporations used that little 5-story house to avoid paying taxes, it has now grown to over 18,000 corporate addresses."

Statements made from the floor of the House of Representatives also reflect this negative attitude about Cayman. (See Sidebar 3)

What then can be understood from the pejorative statements regarding the Cayman Islands, particularly in light of the numerous international frauds perpetrated by reputable institutions and ostensibly reputable individuals without any Cayman connection?

There are several indications which put the issue of financial crime in the Caymans into perspective.

First, those who routinely insinuate that the Uglad House facilitates tax evasion do not present examples corroborating their assertion. Similarly, the aforementioned 2008 Senate Finance Committee hearing on Cayman lasting about an hour and forty minutes made scant reference to the Cayman Islands itself. Most of the witness statements and subsequent questions dealt with the overall issue of tax evasion, unrelated to the Cayman Islands.

In fact, one of the hearing's witnesses who is one of



America's leading authorities on financial crime and offshore centres, attorney Jack Blum said, "I listened to the comments about Uglund House and must say to you that Uglund House represents the best of offshore." (See sidebar 4)

Second, a report entitled Large US Corporations and Federal Contractors with Subsidiaries in Jurisdictions Listed as Tax Havens or Financial Privacy Jurisdictions, published by the GAO December 2008 found that according to 2007 revenue figures, eighty three of the 100 largest publicly traded companies and sixty three of the 100 largest publicly traded US federal contractors reported having subsidiaries in tax havens. In short, the report emphasised that the establishment of these offshore subsidiaries is itself legal.

In fact, the point of Senator Dorgan's April 2010 statement was to highlight that US law allows offshore subsidiaries to be established and that the problem is their abuse ("It was a legal dodge by companies setting up an address in order to funnel revenue through that address to avoid paying taxes to the United States . . . How about helping me close those loopholes?") Senator Levin similarly entered DA Morgenthau's Wall Street Journal article for the same reason, stating "we have a lot more work to do to rectify" the problem of abusive offshore entities. And Morgenthau himself wrote "We have to learn from our mistakes" and warned of the consequences "if Congress and Treasury fail to bring under US supervisory authority the financial institutions and transactions in secrecy jurisdictions."

Third, A July 2008 GAO report entitled Cayman Islands – Business and Tax Advantages Attract US Persons and Enforcement Challenges Exist stated that "US officials consistently report that cooperation by the Cayman Islands government in enforcement matters has been good" and quoted a senior Justice Department official who

"indicated that the Cayman Islands is the busiest United Kingdom overseas territory with regard to requests for information, but also the most cooperative" and that Cayman is one of DOJ's "best partners among offshore jurisdictions". The report also noted Cayman's "reputation as a stable, business-friendly environment with a sound legal infrastructure [which] also attracts business. This activity is typically legal."

Even a FinCEN Advisory dated July 2000 reported Cayman's "records of cooperation with criminal law enforcement authorities in the United States is excellent".

Perhaps it is not a coincidence that the SEC chose CIMA as its partner for their April 2010 regional training program. And a May 2010 review of the Caymans by QFinance reported the following: "The 'dark days' of the Cayman Islands' financial services and banking centre, when the Islands were a haven for money laundering, are now well and truly over."

What we can conclude therefore is as follows. Despite the numerous and significant international cases, there have been no major Cayman entities or individuals known as international fraudsters. Even in his 15-page whistle blower letter of February 2008, Rudolf Elmer, the former COO of the Cayman Branch of Bank Julius Baer & Trust Ltd, criticised the Swiss private bank for aiding clients to evade tax but alleged no wrongdoing on the part of any Cayman entity or person. His criticism of Cayman was directed against Cayman law which allowed for certain financial transactions, which he thought should have been prohibited; his letter made no claim that a Cayman entity or person violated Cayman law or conducted any other impropriety.

Many institutions and individuals are attracted to the Cayman Islands because of its political and financial stability and business-friendly

environment, accessible by Americans with a thirty minute flight from Florida. The Caymans has a strong record of bilateral and international cooperation. And much of the abuse associated with Cayman is due to loopholes in US law that Congress has heretofore been unable to close.

It appears therefore that the reasons for the negative view of the Cayman Islands may be best explained by public relations rather than financial and criminal analysts.

BIO: AT A GLANCE

Richard Horowitz is an attorney concentrating on corporate, security and international matters. He holds a private investigator's license and served in the Israel Defence Forces for six years attaining the rank of captain. He has lectured in 17 countries on money laundering, terrorism and related topics, including at last year's Global Compliance Solutions conference in the Cayman Islands.



Richard Horowitz
Richard Horowitz & Associates
Attorneys at Law
450 Seventh Avenue, 9th Floor
New York, NY 10123

T: +1 (212) 829 8196
E: rhorowitz@rhesq.com
W: www.rhesq.com