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## **FOR IMMEDIATE RELEASE**

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**The CJ addresses Geneva Trusts Conference:  
Protecting the Reputation and Integrity of [the] Islands' administration of justice**



Delivering the keynote address at the invitation of the convenors of a major trust conference, the Chief Justice of the Cayman Islands has reaffirmed not only the legislative integrity and the international value and significance of the Islands' trust industry, but also the commitment of Cayman's Courts to safeguarding legitimate trust interests.

At the same time, the Islands' top jurist pledged vigilance in the Courts against the illegitimate exploitation of the trust concept.

In this extra-judicial role of "protecting the reputation and integrity of [the] administration of justice," the Chief Justice of the Cayman Islands was addressing the 28<sup>th</sup> Annual Transcontinental Trusts Conference, in Geneva, Switzerland, in late June. The theme of the conference was "Shaping the Global Agenda of the Offshore World."

The 220 senior trust industry professionals who attended included senior managing partners, directors, partners, public prosecutors and senior tax managers of major relevant firms and government agencies globally.

Commenting on Chief Justice Smellie's contribution, conference chairman Richard Hay said: "We were delighted to attract Chief Justice Smellie to deliver the keynote address to set the scene for the conference." Given the current intensity of scrutiny of offshore centres, "the insights from a senior and distinguished jurist were warmly welcomed by the senior international trust industry professionals in the audience," he said.

Chief Justice Smellie's comments on regulation and fiscal transparency were, Mr. Hay said, particularly timely as similar concerns had attracted "close media attention ... throughout the G8 Heads of State Summit which immediately preceded the conference."

Speaking on behalf of conference attendees, Mr. Hay said: "We were all delighted by Chief Justice Smellie's participation throughout the conference. Delegates were delighted to meet him and we were very grateful to the Chief Justice for taking the time to join us."

The Chief Justice's conference message was that the Cayman Islands courts would continue "to strive to maintain the proper balance" between protecting the interests of legitimate business and ensuring that the Cayman Islands do not offer safe haven to would-be exploiters of the "dark side" of the trust concept.

Those who may have such intentions, the Chief Justice said, "will soon discover that they are most unwelcome and will find no haven in our jurisdiction."

At the same time, the Chief Justice was unwavering in affirming that trusts will remain a "legitimate and important estate and succession planning tool ... available in the world of international finance."

So why is this such an important issue, prompting an invitation to the Islands' top jurist?

In post-speech comments for this article, the Chief Justice said that the size and potential of the trust industry in Cayman and other offshore jurisdictions had captured the attention of onshore tax regulators. That has triggered, he said, "the latest G8 tax initiative calling for creation of registries (both for companies and trusts) and for complete transparency of beneficial interests."

A large part of the argument for these initiatives, he added, rests on the widely held but mistaken notion that offshore trusts are shams and should be disregarded so as to allow their assets to be treated as still belonging to their grantors and so liable to be taxed as the grantors' assets. Meanwhile, he said, ironically, trusts which are established onshore continue to be respected and regarded as owning assets in their own right.

The legitimacy of offshore trusts and their viability as a legitimate tax planning tool are being further undermined, he commented, because of the notion that they are peculiarly prone to abuse by money launderers and terrorists.

These arguments are contrary to the experience before the Cayman courts, the Chief Justice noted. Trusts arise for consideration by the courts on a regular basis and are found to be legitimate and important instruments for asset protection and estate and succession planning.

“For reasons such as these and others I have considered it important to write and speak extra-judicially about our work in relation to offshore business. I find that if we don’t speak for ourselves, what we do becomes defined by others, in particular our onshore detractors,” he said, adding, “It therefore becomes a matter of protecting the reputation and integrity of our administration of justice.”

In his speech, the Chief Justice said that the G8 initiatives which would seek to compel offshore jurisdictions to abandon the trust concept is not only unfair but would also be “contrary to the centuries’ old principle of public international law that no nation is obliged to enforce the tax regime of another nation within its own territory.”

Overall, in his keynote address, entitled “Balancing the Requirements of the Trust with Fairness and Probity – A Perspective from the Cayman Islands Courts,” the CJ assured the gathering of relevant leaders from around the globe that the Islands’ “courts will continue to strive to maintain the proper balance.” And that means, he said, that legitimate trust business will continue to be accorded all the protection of Cayman Islands law, while those intending unlawfully to exploit local provisions will remain unwelcome.

A copy of the speech can be found at <http://www.judicial.ky/publications/speeches>

