Client Memorandum

TRAVERS THORP ALBERGA
ATTORNEYS-AT-LAW

TAX INFORMATION EXCHANGE – CAYMAN ISLANDS COURT OF APPEAL RULING

Cayman Islands Tax Information Authority v 1. MH Investments, 2. JA Investments – CICA No. 31 of 2013; G391/2012

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The Court of Appeal in rejecting the appeal of the Tax Information Authority against the decision of Mr Justice Quinn in MH Investments Ltd and JA Investments Ltd[1] has confirmed in all respects that in seeking to rely on the provisions of any tax information exchange agreement, a foreign tax authority, and on its behalf the Cayman Islands Tax Information Authority, must adhere strictly to the terms of the relevant agreement and the *Tax Information Authority Law*.

Indeed, Mr Justice Quinn in his comprehensive judgment at first instance, had pointed out that in the light of the Cayman Islands Bill of Rights, the Court is led to apply "a more anxious level of scrutiny and standard of review, just as the Human Rights Act influenced the approach adopted by the Courts in England and Wales". In the event the complete failure of the Tax Information Authority to serve on a person who was the subject of a request a notice advising of the existence of the request, transpired to be the sole point on which counsel for the Appellants advanced oral argument on appeal.

This challenge to paragraph 4 of Mr Justice Quinn's Order at first instance failed comprehensively: the Court of Appeal found, upholding Mr Justice Quinn, that no such notice was given to the "person subject to the request". This fundamental flaw prevented the respondent companies from making due application in good time to challenge the validity of the requests for information (or production notices, under the Law) issued by the Tax Information Exchange Authority as the Law entitled them to do.

Subsequent revision to the legislation changing the identity of the persons upon whom notice must be served does not adversely affect the efficacy of the agreement but avoids any doubt as to the correct procedure that must be followed by the Tax Information Authority. What is clear from the Court of Appeal judgment is that to obtain information that would otherwise be regarded as confidential under Cayman Islands law through the mechanism of a tax information exchange agreement requires strict compliance with the terms of that agreement and the Law.

Anthony Travers
Senior Partner, Cayman Islands
Tel: +1 345 949 0699
Fax: +1 345 949 8171
atravers@traversthorpalberga.com
www.traversthorpalberga.com

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[1] See Client Memorandum *Tax Information Exchange and the Cayman Islands Bill of Rights,* Sept. 2013.