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Westlaw® China Update

FEATURE:

At the Forefront of User-Friendly International Business Legislation

Author Christopher W. Bickley says the growth of offshore companies in Bermuda, the British Virgin Islands, and the Cayman Islands reflects the demand for reliable, tax-neutral legal structures.
The latest legal developments and informational resources from around the world

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Offshore companies have received much press recently. Although some of the press coverage has been sensationalized or negative, the widespread use of offshore companies in international financing transactions is a testament to the demands of the global marketplace for legal structures which are dependable, flexible, and tax neutral.

Since the publication of the last edition of this title, as aptly highlighted by Warren Buffet, the tide of the world economy has gone out and left many companies and businesses painfully exposed. The decline and fall of previously reputable and significant firms and individuals has sent shock waves throughout the global economy, and those offshore jurisdictions whose success has been so attributable to the rise in world trade have necessarily been impacted. Instead of starting new ventures or businesses, firms globally have been looking to consolidate and retrench to withstand the economic downturn.

This has not diverted people’s focus away from offshore companies. Far from it, the fact that they are continually used has brought them timely onto the radar of politicians, with the result that never before has there been so much misunderstanding and rhetoric about their uses. It is hoped that this book might provide the reader with an understanding of Bermuda, BVI, and Cayman Islands companies and why they are so popular.
The factors that spur offshoring's growth

The development of the offshore jurisdictions can be traced to three particular important features: the development over time of flexible but clear company legislation based on English common law principles; a partnership between government and the private sector to ensure that each jurisdiction meets the demands and the challenges of an ever-changing world; and tax neutrality.

Bermuda, BVI, and the Cayman Islands have all been at the forefront of jurisdictions which have endeavored to make their legislation as user-friendly as possible so as to accommodate the demands of international business and, particularly, the business areas where each jurisdiction has been prominent. The fact that each of the jurisdictions is relatively small in comparison to other countries has meant that the local business and legal communities more readily cooperate with the government in each jurisdiction and respond relatively quickly to the demands of the marketplace.

A recent example of this has been the expeditious signing by the territories of a number of tax exchange agreements with OECD countries and that each territory has been listed on the OECD White List of those countries that have substantially implemented the internationally agreed tax standards.\(^1\)

A recent survey listed the Cayman Islands; Hamilton, Bermuda; and the British Virgin Islands as the 26th-, 28th-, and 33rd-ranked global financial centers in terms of competitiveness, a staggering feat in light of their respective sizes, ranking ahead of cities such as Melbourne, Milan, and Osaka.\(^2\) There are, however, many disadvantages to the territories being small, not least of which is defending themselves on the world stage when politicians, with their own agendas, unfairly lay blame at their door.\(^3\)

A guide to understanding the islands’ law and business practices

The aim of this text is to provide the reader with a general introduction to companies and company law in Bermuda, the BVI, and the Cayman Islands. It is hoped that the book will be of particular assistance to the onshore practitioner or company secretary by providing a clear outline of the context within which companies in these jurisdictions operate. There is a clear bias in this book towards the Asian region as that is where the writer has practiced offshore law for the last 13 years and because of the undoubted popularity in Asia for offshore companies.\(^4\) However, the book is a starting point for any reader who is interested in how these companies function in a broad range of international transactions, whether they are related to private equity investment, debt financings, initial public offerings, or fund formation.

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3. The writer has great admiration for what President Barack Obama has achieved so far in his presidency. However, his well-publicized allegation that a particular building in the Cayman Islands is “either the biggest building in the world or the biggest tax scam in the world” because it provides a registered office in the Cayman Islands to over 18,000 companies clearly ignores the fact that the exact same function is provided in Delaware in the United States by a number of different corporate service providers.
4. Asia has a huge demand for offshore companies, with BVI the second biggest foreign direct investment source into China for the last ten years. More than 70% of companies listed on the Hong Kong Stock Exchange are incorporated in Bermuda or Cayman.
Continued development despite a difficult economy

There have been a number of major developments in the law and practice of offshore jurisdictions since the release of the Second Edition of this title over two years ago. The downturn in the world economy has led to the insolvency and restructuring of many offshore entities. This has led to a new focus on the insolvency regimes in each jurisdiction with recent reported cases in Bermuda, BVI, and the Cayman Islands involving investment funds and their ability to face investors’ redemption requests.

In addition, the Cayman Islands Companies Law has had two major amendments, with one entirely revamping liquidation practice and procedures and the other facilitating the merger of Cayman Islands companies. In BVI a new computer registration system, VIRGIN, has been introduced, and practitioners have now had the benefit of over four years’ experience with the BVI Business Companies Act.

Like any other growing industry, the offshore world is a competitive one and there continue to be a number of other jurisdictions vying to offer inexpensive company incorporation and maintenance services. As the industry continues to mature, a jurisdiction’s popularity will depend not on price, but more on the ability of the jurisdiction to maintain sound laws and internationally recognized standards, provided through appropriately qualified and experienced practitioners.

The world is presently going through an historic economic retrenchment. However, once the tide does come in, and it will certainly come in, Bermuda, BVI, and Cayman Islands structures will be there to once again oil the wheels of world commerce.

About the Author

Christopher W. Bickley is the author of Bermuda, British Virgin Islands and Cayman Islands Company Law, 3rd Edition and a partner in the Hong Kong office of Conyers, Dill & Pearman. His practice includes all aspects of corporate law with specialized expertise in corporate finance. He is particularly experienced in initial public offers and listings of shares in Bermuda companies on the Main Board, the Growth Enterprise Market of The Stock Exchange of Hong Kong Ltd., and stock exchanges in other jurisdictions.

Bermuda, British Virgin Islands and Cayman Islands Company Law, 3rd Edition, was published in October 2009 by Sweet & Maxwell Hong Kong. For additional product details, see page 12.
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Author Interview

Drafting Commercial Agreements, 4th Edition


What is the primary audience for Drafting Commercial Agreements?

The book is written for solicitors or lawyers who are in general commercial practice, whether in-house or in small firms and some larger firms. They’re handling local transactions, not international ones.

The book covers lots of different topics and crosses lots of different specialties. It’s not aimed at specialists in a particular field of commercial law.

Would a lawyer working outside of the UK benefit from your book?

Yes, certainly it’s applicable anywhere in the Commonwealth, because those countries’ laws are based on the British common law. The basic principles are the same. That would be true of the United States, also. A lot of the agreements would be perfectly valid, though, for example, you’d also have to know Australian law if you were going to use one of the agreements in Australia.

What prompted you to write the original edition?

That came out in 1993. There are books like this that I’d used in the past, and I wanted to write one that would be up to date. Its comprehensiveness is important. The idea is to cover the broad field of the many different relationships and agreements that a commercial lawyer would deal with. You get all of this in one book.

If you’re a general commercial lawyer, you could buy a library of books covering the topics in each chapter, but at the end of it, you’d probably get as much use out of this one book.

If you think about an in-house counsel, for example, there’s not a lot of room or money for law libraries.

What areas of commercial law have changed the most since the third edition was published?

Consumer law has changed a great deal. Other areas are unfair contract terms and pensions. The book provides updated information about those topics and considerable new material about confidentiality agreements. We don’t have legislation in the UK that governs trade secrets; it’s all caselaw.

European Union law generally has had a major effect on us. The EU regulates commercial agreements mainly through competition law. There’s much more regulation of distribution agreements, intellectual property licensing, and consumer protection. Agency agreements are now also regulated under EU law, while the common law had very little regulatory effect on them.

Looking farther back, what trends do you see?

It’s clear that the trend has been toward increasing governmental regulation of commercial relationships. It used to be that two parties would make an agreement, upon whatever terms satisfied them. A court might occasionally get involved, but commercial agreements were essentially a private matter.
The government’s aim is to provide more certainty, but more regulation makes the lawyer’s task more difficult than it was in the past. The draftsman is more circumscribed in what he can do with an agreement.

Another trend is the use of alternative dispute resolution for commercial disputes. That’s frequently required in the UK.

Are there some types of commercial agreements that lawyers find particularly difficult?

I’d put asset acquisitions, consumer law, and exclusion and limitation clauses in that category, which is why the book covers them at some length.

Also, the CD-ROM that comes with the book contains all the agreements. That saves the lawyer a great deal of time and effort in producing documents.

About the Author


Drafting Commercial Agreements, 4th Edition, was published in November 2009 by Sweet & Maxwell. For additional product details, see page 11.
New Products

Antitrust and Competition

NEW TITLE

Competition Law in China and Hong Kong
China Law Library
edited by Graeme Johnston

This book offers you depth of understanding about China’s 2008 Anti-Monopoly Law that you cannot gain simply by reading the legislation and other official materials. Authored by experienced, China-based lawyers from Herbert Smith LLP, it can help you avoid the heavy fines and negative exposure that can result from infringements. It provides a unique description of the legal position, both on paper and in practice, and shows where there is maneuvering room in unclear areas.

Jurisdiction China and Hong Kong | Published June 2009 by Sweet & Maxwell
Hong Kong | Hardcover, softcover supplement | ISBN 9786626613245 | $359

NEW EDITION

edited by Christopher Jones and Marc van der Woude

The annual edition of this renowned guide has become the recognized reference point on competition matters from the European Commission. It is a comprehensive source of decisions, regulations, notices, judgments, and tables of fines awarded. The new edition covers:
• Mergers
• Joint ventures
• Court of First Instance judgments
• EC and European Court decisions
• Selected national competition cases from 27 countries
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• Fiduciary fund management
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• EC and international initiatives to regulate financial activity
• The relationship of key legal principles to specific problems encountered in practice
• Torts, breach of trust, equitable fraud, and other wrongs
• The law governing various types of lending transactions and securities in the UK
• Techniques for refinancing, such as interest rate swaps and asset securitization

Jurisdiction UK | Published December 2009 by Sweet & Maxwell | Hardcover | ISBN 9780421947504 | $455

Bankruptcy

NEW TITLE
Bankruptcy Law
by Michael Forde and Daniel Simms

A comprehensible, accessible guide to Ireland’s bankruptcy law, this work covers developments under the Bankruptcy Act 1998 and the EC Insolvency Regulation 2000 and analyzes an extensive range of UK bankruptcy cases. Contents include:

• Creditors’ remedies other than bankruptcy
• Schemes of arrangement with creditors
• Commencing bankruptcy
• Effects of adjudication as a bankrupt
• Official assignee and creditor’s trustee
• Proving claims and paying debts
• Bankruptcy in partnerships, trusts, estates, and family law situations
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Jurisdiction Ireland | Published October 2009 by Round Hall | Hardcover | ISBN 978185005348 | $438
NEW EDITION
McPherson’s Law of Company Liquidation, 2nd Edition
by Andrew R. Keay

McPherson’s is the authoritative reference on the liquidation of UK companies. It provides penetrating analysis of the various winding-up methods, division of assets, investigations, examinations, private international laws, and legal considerations involved in creditors’ petitions and other petitions. It gives insolvency attorneys, business executives, accountants, and academics up-to-date information about:
• Roles and duties of liquidators and creditors
• Misconduct and prosecutions
• Distribution of surplus assets
• Cross-border legislation and its effects
• Enterprise Act 2002 and amendments to the Insolvency Rules

• Caselaw related to the Phoenix Syndrome, Shierson v. Rastogi, Commissioner of Taxation v. Linter Textiles Australia Ltd., and other recent decisions

Jurisdiction UK | Published October 2009 by Sweet & Maxwell | Hardcover | ISBN 9781847033277 | $372

Business and Commercial Law

NEW EDITION
Drafting Commercial Agreements, 4th Edition
Commercial Series
by Richard Christou

This work offers practical guidance for negotiating and drafting the various business agreements that commercial lawyers handle frequently in Commonwealth and EU countries. These include documents for the supply of goods and services, agency, distribution, mergers, acquisitions, and confidentiality. Coverage includes:
• Detailed discussion of the Unfair Contract Terms Act 1977
• Precedents in print and on CD-ROM for a broad range of business agreements
• Discussions of contentious matters, dispute resolution, and settlement agreements
• All recent legislation and caselaw

Jurisdiction UK, EU, Commonwealth | Published November 2009 by Sweet & Maxwell | Hardcover and CD-ROM | ISBN 9781847036100 | $311

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Parallel Importation Under European Union Law, 2nd Edition
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A groundbreaking work, this title covers all legal issues involved in repelling and facilitating parallel imports within the EU. It explains how parallel importation relates to royalty-collecting societies and trade associations and to automobile and film distribution. The new second edition offers:

• Enhanced coverage of e-commerce in relation to collecting societies and the importing and trading of digital works
• Advice on why and how to use anticompetitive agreements and how to challenge them
• Discussion of burden of proof after Davidoff and consent for extra-EU imports
• Consideration of more than 75 new parallel import cases decided since 2003
• Comparisons of EU law with U.S., Australian, and Japanese law
• Case studies and summaries, policy guidance, worked examples, and checklists

Jurisdiction UK, EU, Commonwealth | To be published March 2010 by Sweet & Maxwell | Hardcover | ISBN 9781847032874 | US $323

Business Organizations

NEW EDITION

Bermuda, British Virgin Islands and Cayman Islands Company Law, 3rd Edition
by Christopher W. Bickley

This timely, landmark work provides lawyers and company directors with an indispensable guide to investment transactions in Bermuda, the British Virgin Islands, and the Cayman Islands. It brings readers up to date on major developments in the law and practice of offshore jurisdictions over the past two years, including the downturn in world economies and the insolvency and restructuring of many offshore entities.

It is a useful starting point to understand the three jurisdictions’ laws on:

• Capital raising debt and equity, mutual funds, securitizations, and minority rights
• Compliance issues
• Insolvency

The author is a partner in the Hong Kong office of Conyers Dill & Pearman and practices all aspects of corporate law, specializing in corporate finance.

Jurisdiction Bermuda, British Virgin Islands, and Cayman Islands | Published October 2009 by Sweet & Maxwell Hong Kong | Hardcover | ISBN 9789626613115 | US $359

Prices subject to change due to currency exchange rate fluctuations.
NEW EDITION
Consolidated Alberta Business Corporations Act, Related Statutes and Regulations 2009-2010
by Annamarie Bergen

This volume compiles the full text of the Alberta Business Corporations Act and relevant provisions of the province’s Corporate Tax Act, Companies Act, Cooperatives Act, Financial Administration Act, Indemnity Authorization Regulation, Loan and Trust Corporations Act, and Partnership Act. Also included are additional regulations, useful forms, and a table of concordance with Canadian federal, Ontario, and British Columbia business statutes.

Jurisdiction Alberta | Published September 2009 by Carswell | Softcover | ISBN 9780779619720 | $65

NEW TITLE
Corporate Governance and Regulation: An Irish Perspective
by Ronan Keane and Ailbhe O’Neill

The authors bring together the thinking of legal practitioners and academics concerning corporate governance in Ireland in the 21st century. The result is of both academic interest and practical use. Coverage includes:

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• The entrepreneur and norms to identify legitimate risk taking under Irish company law
• The role of a target company’s board during a takeover bid
• Directors’ compliance statements, attesting on a “comply or explain” basis, and enforcement

Jurisdiction Ireland | Published September 2009 by Round Hall | Hardcover | ISBN 9781858005195 | $273

NEW TITLE
Corporate Governance in Malaysia
by Rashidah Abdul Rahman and Mohammed Rizal Salim

A unique, fresh approach, this title considers the ways in which Malaysian corporations should function. It adopts a multidisciplinary approach and a postcolonial, developing country perspective, taking readers beyond the traditional concept of corporate governance as the protection of shareholder interests, to the concept of enhancing all stakeholders’ interests. The authors discuss how legal theories and corporate governance laws influence or undermine each other. Topics include:

• Theorizing corporate governance
• Corporate ownership structures
• Self-regulation and codes, and division of corporate powers
• Board structure, composition, size, duties, committees, rewards, and high-performance attributes
• Shareholder remedies and whistle-blowing
• Institutional investors

The book is a must-read for all persons interested in the future of Malaysian corporations.

Jurisdiction Malaysia | Published September 2009 by Sweet & Maxwell Malaysia | Hardcover | ISBN 9789675040313 | $66

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• A complete set of model agreements and detailed commentary on their use and implications
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• Substantive criminal law for all types of offenses

This edition offers:
• Commentary on The Statement of Prosecution Policy and Practice, which took effect in January 2009
• Revised commentary on organized and serious crimes and confiscation of the proceeds of crime
• Updated case citations

Jurisdiction  Hong Kong  |  Published September 2009 by Sweet & Maxwell Hong Kong  |  Hardcover  |  ISBN 9789626613535  |  $706

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• Standing orders, memo books, notes, and effective report writing
• PatROLS and fire safety and prevention
• Communications, alarm systems, and access controls
• Management of emergencies, disasters, crowds, traffic, and crime scenes
• Police relations and investigations
• Courts, evidence, and Canadian legal issues
• Use of force
• Close protection
• Computer crimes, loss prevention, drug awareness, and more

The author is the president of the Centre for Security Training Management in Toronto and Canada’s national director of the International Association of Personal Protection Agents.

Jurisdiction Canada | Published October 2009 by Carswell | Softcover | ISBN 9780779822294 | $75

Evidence

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• Meadow v. General Medical Council and other recent caselaw

• Methods of cross-examining experts
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• Examines evidence taken or served prior to trial and examination of witnesses at trial
• Considers significant Commonwealth evidentiary decisions

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Family Law

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by Hon. Justice Henry Vogelsang, Brahm D. Siegel, and Hon. Madam Justice Margaret McSorley

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• Relevant forms and a flowchart displaying procedural steps
• Amendments to the Rules of Civil Procedure
• An expanded version of McCarthy Tetrault’s Guide to the Family Law Courts in the Toronto Area
• Contact data for all courts where the Family Law Rules apply
• Detailed table of contents and index, section tabs

Jurisdiction: Ontario | Published: September 2009 by Carswell | Softcover | ISBN 9780779820474 | $100

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Health Care Law

NEW TITLE
Medical Negligence in Malaysia – Cases and Commentary
by Puteri Nemie and Jahn Kassim

This is the first book written on medical negligence caselaw in Malaysia and will be useful to lawyers, judges, physicians, and hospital administrators. It covers cases from the 1960s to the present, clearly and concisely showing the facts and holdings and including relevant excerpts from the courts’ decisions. Key terms that precede each case are a quick guide to its subject, scope, and content. Illuminating notes follow and analyze cases, sometimes comparing and contrasting selected cases or discussing the development of Malaysian law.

Jurisdiction Malaysia | Published September 2009 by Sweet & Maxwell Malaysia | Softcover | ISBN 9789675040306 | $17

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Intellectual Property

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• Comparisons of EU jurisprudence with that of the U.S. Supreme Court
• Tracing of the long-term evolution of European trademark law

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