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# UK ASSET HOLDING COMPANIES – EFFECTIVE GOVERNANCE IN PRIVATE MARKETS

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# UK Asset Holding Companies – Effective Governance in Private Markets

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The successful introduction of the UK Qualifying Asset Holding Companies ("QAHC") regime last year, which removed some of the barriers faced by private equity holding companies compared with some other jurisdictions in the EU, has sharpened the focus on what it takes for effective corporate governance in today's private markets, highlighting the role of the specialist independent director in these structures.

The QAHC framework, designed to create efficiencies with tax incentives and a streamlined process for the use of UK companies by institutional investors and funds in private equity structures, mirrors similar regimes in Ireland and Luxembourg, where key eligibility criteria are met, including certain conditions relating to ownership, activity and investment strategy. The measures, which were introduced to address the perceived difficulties for asset holding companies entrenched in the UK fiscal system, have seen a meaningful increase in the use of UK companies in acquisition structures. The regime also takes shape against a changing tax landscape in Europe, with a focus on tax base erosion and profit shifting ("BEPS"), with the QAHC framework fully in line with BEPS standards.

As certain EU jurisdictions may become potentially less efficient from an asset holding perspective, the UK's position as a domicile for holding companies has been solidified through the QAHC regime, while the UK's wide

network of double tax treaties further underscores the new framework's competitiveness. Furthermore, for many players in the market, they already have operations and substance in the UK, as they will often already have an existing presence there and will not necessarily need to put additional boots on the ground. For those without a strong presence in the UK there is also a depth of suitably qualified service providers able to offer appropriate governance and administration services for asset holding companies.

## Specialist Governance

While corporate governance has evolved dramatically over the past decade and more, particularly with regard to investment funds, governance in the UK has been primarily focused on publicly listed companies. The Authorised Corporate Director ("ACD") model also exists for retail investment funds, but there is no developed framework for corporate governance for private unregulated funds in the UK. This means

institutions can be unsure how to approach governance and rely on the Maples Group as governance experts, with expertise relevant to alternative investment funds and their underlying investments across asset-classes including real estate, infrastructure, transportation, private credit, leveraged loans and technology.

Through the Maples Group's long-standing expertise not just in alternative investments but at the leading edge of corporate governance across multiple jurisdictions, we have been able to leverage this expertise in numerous scenarios for our clients, as the QAHC regime has gained initial momentum, demonstrating the importance of qualified independent directors.

The Maples Group is unique in the UK market in terms of the director services we provide to holding company structures. Our highly experienced team of independent directors have a depth of understanding of private equity, applying governance solutions that are tailored to specific assets and structures. Through our extensive international network, across all the key fund jurisdictions globally, we impart knowledge of enhancements and best practice of governance to our clients, across a range of industries, helping boards make the right decisions, demonstrating the highest standards to stakeholders and protecting investors.

This expertise ensures compliance with global regulation as well as all local requirements. In our experience, many firms that are using UK structures are not always familiar with UK requirements in terms of financial statements and audit requirements, so can be caught off-guard. While the UK has been used as a corporate domicile for many years, it is traditionally seen as a jurisdiction for domestic vehicles, however with the growth of these businesses, compliance extends beyond the UK with regulations such as FATCA and CRS. Some of our clients, for example, also utilise the UK securitisation regime for their fund structures, which can often be a creative and beneficial approach to raising and deploying capital but can demand a bespoke approach to governance.

## Beyond Brexit

While the introduction of the QAHC regime had initially been seen as a step by the UK government to enhance its post-Brexit competitiveness in the European alternative investment fund sector, from our experience, the impact of the legislation has been fairly widespread.

The private equity industry specifically had been characterised in the UK by domestic tax challenges for managers forming intermediate entities through which alternative investment funds were used to hold assets, often resulting in the use of more efficient structures in other jurisdictions. In practice, we are seeing the new QAHC framework being employed by closed-ended private equity funds that typically invest in target companies through multiple asset holding companies, with the ultimate fund domiciled in places such as the Cayman Islands, the British Virgin Islands, Bermuda or Delaware, while the UK holding company operates relatively efficiently and satisfies economic substance requirements.

One thing that is clear is that both the managers of and investors into these private funds are intensely focused on governance in the current environment and highly value the contribution of our independent directors to the boards of both investment funds and their portfolio companies, leveraging the Maples Group's institutional infrastructure and our specialist expertise in alternative funds, with solutions seamlessly integrating regulatory and compliance obligations. For example, we have experience on the boards of asset holding companies within the transportation sector in Scandinavia, to UK domiciled real estate holding companies for Channel Islands Real Estate Investment Trusts, to European software investments for Cayman Islands funds.

Other activity has been on the structured finance side where risk retention vehicles for CLOs traditionally set up as funds, are efficiently established via the incorporation of a Jersey domiciled note issuance vehicle with UK tax residency, which enables the pooling of capital to invest in CLOs, while qualifying under the UK Permanent Regime. Significantly, we are

also seeing a number of UK tax resident Jersey incorporated companies being used as the holding company for portfolio companies, family offices and Cayman Islands funds.

## The Maples Group

With extensive expertise and a depth of knowledge across all facets of alternative investments, complimented by backgrounds in law, accounting, investment banking, CLO and credit markets, the Maples Group offers a sophisticated approach to the governance of asset holding vehicles, encompassing a broad range of industry sectors. Our experienced independent directors bring enhanced security and comfort to stakeholders, ensuring boards of businesses operating within complex investment structures can make the right decisions and fulfil their requisite compliance obligations to the highest standards.

## About the Author

### Sam Ellis

Sam is a Senior Vice President in the Maples Group's London office, where he leads the firm's UK corporate and fiduciary services business. He has extensive financial services experience across structured finance, alternative investment funds, capital markets and investment banking. Sam is also an experienced independent director, having served on the boards of a wide range of alternative investment vehicles, including hedge funds, private equity funds and structured finance vehicles across a variety of jurisdictions and strategies.