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CHAMBERS GLOBAL PRACTICE GUIDES

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## **Cayman Islands: Law & Practice**

Daniel Lee, Sophia Scott, Kimberly Robinson and James Turner  
Maples Group



# CAYMAN ISLANDS



## Law and Practice

### Contributed by:

Daniel Lee, Sophia Scott, Kimberly Robinson and James Turner

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## Contents

### 1. Legal System p.5

1.1 Legal System and Judicial Order p.5

### 2. Restrictions on Foreign Investments p.5

2.1 Approval of Foreign Investments p.5

2.2 Procedure and Sanctions in the Event of Non-compliance p.6

2.3 Commitments Required From Foreign Investors p.7

2.4 Right to Appeal p.7

### 3. Corporate Vehicles p.7

3.1 Most Common Forms of Legal Entity p.7

3.2 Incorporation Process p.10

3.3 Ongoing Reporting and Disclosure Obligations p.11

3.4 Management Structures p.14

3.5 Directors', Officers' and Shareholders' Liability p.15

### 4. Employment Law p.16

4.1 Nature of Applicable Regulations p.16

4.2 Characteristics of Employment Contracts p.17

4.3 Working Time p.17

4.4 Termination of Employment Contracts p.18

4.5 Employee Representations p.18

### 5. Tax Law p.18

5.1 Taxes Applicable to Employees/Employers p.18

5.2 Taxes Applicable to Businesses p.18

5.3 Available Tax Credits/Incentives p.18

5.4 Tax Consolidation p.18

5.5 Thin Capitalisation Rules and Other Limitations p.18

5.6 Transfer Pricing p.19

5.7 Anti-evasion Rules p.19

### 6. Competition Law p.19

6.1 Merger Control Notification p.19

6.2 Merger Control Procedure p.19

6.3 Cartels p.20

6.4 Abuse of Dominant Position p.20

## **7. Intellectual Property** p.20

- 7.1 Patents p.20
- 7.2 Trade Marks p.21
- 7.3 Industrial Design p.22
- 7.4 Copyright p.23
- 7.5 Others p.24

## **8. Data Protection** p.24

- 8.1 Applicable Regulations p.24
- 8.2 Geographical Scope p.24
- 8.3 Role and Authority of the Data Protection Agency p.25

## **9. Looking Forward** p.25

- 9.1 Upcoming Legal Reforms p.25

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**Maples Group** advises global financial, institutional, business and private clients on the laws of the British Virgin Islands, the Cayman Islands, Ireland, Jersey and Luxembourg, through its leading international law firm, Maples and Calder. With offices in key jurisdictions around the world, the Maples Group has specific strengths

in the areas of corporate commercial, finance, investment funds, litigation and trusts. Maintaining relationships with leading legal counsel, the group leverages this local expertise to deliver an integrated service offering for global business initiatives.

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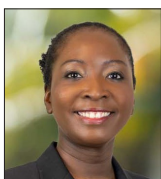
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## 1. Legal System

### 1.1 Legal System and Judicial Order

#### The Applicable Legal System of the Cayman Islands and Basic Organisation of the Judicial Order

The Cayman Islands is a common law jurisdiction, which is based on the English model. It comprises statute law and binding case precedents. English and British Commonwealth case authorities are generally persuasive, but not binding, on the Courts of the Cayman Islands.

Cayman Islands law is derived from several sources:

- Primary legislation, ie, local statutes passed by the Legislative Assembly of the Cayman Islands or its predecessors, and approved by the Governor of the Cayman Islands. For example, the Companies Act (As Revised) of the Cayman Islands (the “Companies Act”) and the Private Funds Act (As Revised) of the Cayman Islands;
- Secondary legislation, ie, legislation enacted pursuant to local statutes. Examples include the Companies Winding-Up Rules (2023 Consolidation) and the Private Funds Regulations (As Revised) of the Cayman Islands;

- Statutes passed by the United Kingdom (“UK”) Parliament that have been expressly extended to the Cayman Islands;
- Orders of His Majesty’s Privy Council that are applicable to the Cayman Islands; and
- Any relevant remaining English and British Commonwealth common law and rules of equity established by settlement not having been replaced by local or UK statute.

The Grand Court of the Cayman Islands (the “Grand Court”) is the superior court of record of first instance for the Cayman Islands. The caseload of the Grand Court is divided into five divisions: Civil, Family, Admiralty, Financial Services and Criminal. Appeals from the Grand Court are to the Cayman Islands Court of Appeal (which usually sits three times each year). The final court of appeal is the Privy Council in England.

## 2. Restrictions on Foreign Investments

### 2.1 Approval of Foreign Investments Foreign Investments in the Cayman Islands *Local operating business*

Approval from the Cayman Islands authorities may be required if foreign investors are invest-

ing in a Cayman Islands company that conducts local business (ie, with businesses and individuals located in the Cayman Islands) (a “Local Company”). This is necessary where it is contemplated that a foreign investor will hold greater than 40% voting or economic interest in a Local Company. The Local Companies (Control) Act (As Revised) of the Cayman Islands (the “LCCA”) has protective provisions therein that provide that a Local Company must have 60% Caymanian shareholders and directors, who maintain 60% of the economic and voting control of the company. An application would have to be made to the Trade and Business Licensing Board (the “Board”), which has been established pursuant to the Trade and Business Licensing Act (As Revised) of the Cayman Islands (the “TBLA”), to obtain a special licence under the LCCA or waiver of the provisions of the LCCA to have greater than 40% foreign ownership and control of the Local Company.

### *Entities registered or incorporated in the Cayman Islands operating to further their business outside the Cayman Islands*

There is no prohibition on foreign investors investing in Cayman Islands entities that do not fall within the category of a Local Company, ie, entities that are registered or incorporated in the Cayman Islands but are not doing business with businesses and individuals in the Cayman Islands.

Certain categories of entities, such as entities registered under the Mutual Funds Act (As Revised) of the Cayman Islands, may require minimum investment thresholds. However, while there may be minimum investment thresholds, there are no restrictions regarding foreign investors making an investment in a Cayman Islands mutual fund.

### *Property in the Cayman Islands*

There are no restrictions on foreign investors purchasing real property in the Cayman Islands.

## **2.2 Procedure and Sanctions in the Event of Non-compliance**

### **Local Operating Business**

To the extent a Local Company is unable to procure the required 60% local participation to conduct local business, the Local Company will first need to apply to the Board for an LCCA licence to carry on business in the Cayman Islands. The Local Company would have to submit an application to the Board, together with supporting due diligence documents and evidence that the Local Company did try to procure local participation. Copies of published advertisements in the Cayman Islands newspapers would suffice for evidence that the Local Company did seek local participation. The Local Company would also have to disclose to the Board any responses received from Caymanians. For the purpose of considering that application to grant an LCCA licence, the Board would also have to consider, among other things, the existing local business in the Cayman Islands and the benefit to the Cayman Islands and Caymanians. The application process generally takes approximately three to six months. An LCCA licence may be issued for up to 12 years and may be subject to such terms and conditions that the Board may see fit to specify in the licence. A Local Company that has an LCCA licence must file a return of the shareholdings of such Local Company as at December 31st with the Board in January each year, for so long as the licence is valid. Once the LCCA licence has expired it cannot be renewed.

Any Local Company that has less than 60% local participation that does not hold an LCCA licence and is not otherwise exempted or licensed to operate in the Cayman Islands under another

law, commits an offence and is liable (i) on summary conviction to a fine of KYD200 (USD243.90) and (ii) on conviction on indictment to a fine of KYD1,000 (USD1,219.51), in each case, for each day the offence continues.

## 2.3 Commitments Required From Foreign Investors

In respect of Local Companies, the Board does not condition their approval on commitments from foreign investors. However, subject to any general directions from the Cabinet of the Cayman Islands (which consists of the Premier of the Cayman Islands, the Deputy Premier of the Cayman Islands, five members of the Cayman Islands Legislative Assembly, appointed to serve as a Minister of the Cabinet, the Deputy Governor of the Cayman Islands and the Attorney General of the Cayman Islands), the Board may have regard to certain matters (such as the advantage/disadvantage which may result from the applicant Local Company carrying on business in the Cayman Islands) when deciding whether or not to grant a licence.

## 2.4 Right to Appeal

To the extent a Local Company is dissatisfied with a decision made by the Board, such Local Company may, within 28 days of the communication of the decision (or such longer period as the Appeals Tribunal (which is a tribunal established under the TBLA) may allow), appeal against that decision to the Appeals Tribunal. Any notice of appeal must specify, among other things, the decision which is being appealed, the Board's reason for its decision and the grounds of the appeal. The Appeals Tribunal may then decide whether they will allow the appeal and fix a time and date for a hearing.

The decision of the Appeals Tribunal will be communicated to the appellant and the Board within

28 days of the hearing. A further appeal may be made to the Grand Court from a decision of the Appeals Tribunal on a point of law only.

## 3. Corporate Vehicles

### 3.1 Most Common Forms of Legal Entity

The Cayman Islands has several types of corporate vehicles or legal structures available for conducting business in or outside of the Cayman Islands. Common types of entities include:

#### Exempted Companies

Exempted companies are incorporated under the Companies Act and are the most common form of Cayman Islands vehicle used when carrying on business mainly outside of the Islands. They offer a flexible and tax-efficient structure for companies to operate in the global market. The main constitutional documents of an exempted company are its memorandum and articles and association that set out the rules for the governance and operation of the company. The issued share capital of an exempted company can be entirely nominal (for example, a single share) and the liability of the shareholders is typically limited to any amounts unpaid on the shares. There are no restrictions on the number of directors or shareholders that an exempted company may have.

#### Ordinary Non-Resident Companies and Ordinary Resident Companies

Ordinary companies are incorporated under the Companies Act but, unlike exempted companies, are subject to the LCCA and are required to comply with local licensing, reporting and disclosure obligations in the Cayman Islands.

Ordinary non-resident companies cannot engage in any business activities within the



Cayman Islands. Ordinary resident companies may conduct business in the Cayman Islands. Ordinary resident and non-resident companies must file a list of shareholders annually with the Registrar of Companies. Ordinary resident companies must also file an annual list of shares held by Cayman Islands residents with the applicable Cayman Islands immigration board to comply with the LCCA requirement that 60% of shares of an ordinary resident company must have Cayman Islands ownership.

## Overseas Companies

Overseas companies (usually referred to as foreign companies) have been incorporated in a jurisdiction other than the Cayman Islands and intend to carry on business in the Cayman Islands. Overseas companies are required to register with the Registrar of Companies pursuant to Part IX of the Companies Act, which is necessary to enable them to hold land or carry on business in the Cayman Islands, or to act as the general partner of a Cayman Islands exempted limited partnership (for which they are commonly used).

## Segregated Portfolio Companies

A segregated portfolio company (“SPC”) is a form of exempted company incorporated under the Companies Act, which is permitted to create one or more segregated portfolios in order to segregate the assets and liabilities of the SPC held within or on behalf of a segregated portfolio from the assets and liabilities of the SPC held within or on behalf of any other segregated portfolio of the SPC. It also may segregate the assets and liabilities of the SPC which are not held within or on behalf of any segregated portfolio of the SPC (called the general assets of the SPC) from the relevant segregated portfolios of the SPC. The segregation of assets and liabilities within segregated portfolios does not create any

new legal entity: the SPC is and remains a single legal entity and any segregated portfolio of, or within, an SPC does not constitute a legal entity separate from the SPC itself. This means, for example, that the SPC for the account of one of its segregated portfolios cannot hold shares issued by the SPC in respect of another of its segregated portfolios. They are commonly used for mutual funds and other investment vehicles seeking to segregate assets and liabilities.

## Limited Liability Companies

A limited liability company (“LLC”) is formed and registered under the Limited Liability Companies Act (As Revised) of the Cayman Islands (the “LLC Act”) and offers a flexible legal structure similar to a Delaware LLC and combine characteristics of an exempted company and an exempted limited partnership (described below). They are corporate entities with separate legal personality and limited liability. They can be used for a variety of purposes, including as investment vehicles where there is a need to have separate legal personality and flexibility, in particular with regard to its operation and management, the rights and responsibilities of its members, and the profit sharing between the members.

## Exempted Limited Duration Companies

An exempted limited duration company (“LDC”) is a form of exempted company incorporated under the Companies Act. An LDC exists for a fixed period of time specified in its Memorandum of Association, which must not exceed 30 years and it must have at least two members. It is generally very uncommon to use an LDC; however, it could be used, for example, where a particular project or venture must be completed within a certain timeframe. Following the expiration of the fixed time period, the LDC will be deemed to have automatically commenced voluntary wind-



ing up and will dissolve with its assets being distributed accordingly.

## Exempted Limited Partnerships

An exempted limited partnership (“ELP”) is a partnership that is registered under the Exempted Limited Partnership Act (As Revised) of the Cayman Islands (the “ELP Act”) and is the most common type of partnership structure in the Cayman Islands, which provides a flexible vehicle for investors to pool capital and conduct investment activities outside of the Cayman Islands. It is frequently used as a private equity fund, hedge fund or feeder fund for international investors. The respective rights and obligations of the general partner and limited partners are set out in an exempted limited partnership agreement. Limited partners benefit from limited liability with all management responsibility vesting in the general partner who is liable for the debts and liabilities of the ELP in the event that the assets of the ELP are inadequate.

## Limited Liability Partnerships

A limited liability partnership (“LLP”) is a partnership that is formed and registered under the Limited Liability Partnership Act (As Revised) of the Cayman Islands. It is the preferred structure used by professional firms to operate and organise their business in the Cayman Islands due to having a separate legal personality and affording limited liability status to all its partners. An LLP is not a body corporate and, in this respect, differs from a UK LLP which structurally is more akin to a corporate rather than partnership vehicle. The LLP, rather than the partners, is liable for such LLP’s debts and losses. A partner may be liable for their own negligent acts or omissions where such partner has assumed an express duty of care and acted in breach of that duty (ie, in the context of providing professional services advice). An LLP must be established by at

least two persons who may carry on a business in common for any lawful purpose. Any person, including natural persons, a body corporate or other partnerships, may be a partner in an LLP. As there is no requirement for an LLP to undertake its business ‘with a view to profit’, an LLP may be a helpful structuring option for not-for-profit organisations and other social enterprises. **Foundation Companies and Companies Limited by Guarantee**

A foundation company is incorporated under the Foundation Companies Act (As Revised) of the Cayman Islands (the “Foundation Companies Act”) as a body corporate with a legal personality distinct from that of its members, beneficiaries, directors, officers, supervisors and founder. Accordingly, it has capacity to sue and be sued and to hold property. Uniquely it is possible for a foundation company not to have any members, provided that its constitution so permits and it continues to have one or more supervisors. A foundation company may be formed for any lawful object, which need not be beneficial to other persons and must be limited by shares or by guarantee with or without share capital. It is a highly flexible vehicle and can, if so desired, include features of a common law trust within a corporate framework. They are typically used for wealth management, estate planning, and asset protection. If used in a private wealth context foundation companies are often incorporated as companies limited by guarantee, which will avoid the need for probate to be obtained in respect of any membership interests.

A company limited by guarantee is a Cayman company (whether exempt or ordinary) that instead of having shareholders has members. Typically, the liability of members of a company limited by guarantee is limited under its constitution to USD1. A Cayman company limited by

guarantee has many of the same features as a Cayman company limited. It is a body corporate with a legal personality distinct from that of its members, directors and officers. Accordingly, it has capacity to sue and be sued and to hold property. Companies limited by guarantee are rarely incorporated for purely commercial purposes, rather they are more typically used for non-profit/club scenarios where there is no expectation of profits passing to the members.

### Trusts (Including Unit Trusts)

In contrast to the vehicles described above, a trust does not have separate legal personality and so a trust itself cannot hold property in its own name. Rather, legal title to property held upon the terms of the trust is vested in the trustees of the trust and it is the trustees who enter into transactions in that capacity and who can sue and be sued. Trusts can be established for a wide range of objectives similar to those for which a foundation company can be incorporated – for example, for wealth management, estate planning, philanthropic endeavours and employee incentivisation schemes. Cayman permits the establishment of non-charitable purposes trusts (known as STAR Trusts), the purposes of which may be to benefit or carry out, as the case may be, a mixture of persons and purposes.

It is also possible to establish a trust for use as an investment vehicle. Such a structure would take the form of a unit trust under which the investors (the unitholders) contribute assets to the trustee to be managed and invested in accordance with the terms set out in the trust deed and any accompanying contractual documents.

### 3.2 Incorporation Process

It is necessary to engage a licensed corporate services provider to assist with the incorporation process.

### Exempted/Ordinary Resident/Ordinary Non-Resident Companies/Other Companies

In order to incorporate a company, the corporate services provider will prepare and file the memorandum and articles of association with the Registrar of Companies, together with the appropriate filing fees. In the case of exempted companies only, a statement is also required to be filed, which confirms that the operations of the company will be conducted mainly outside of the Cayman Islands. The initial subscriber shareholder will typically be an affiliate of the corporate services provider and the subscriber will transfer the subscriber share to the shareholder of record after incorporation or shall be automatically repurchased by the company following the issuance of any further shares. Once the Registrar of Companies has processed the incorporation documents, the company will be deemed to have been incorporated and a Certificate of Incorporation will be issued.

### Exempted Limited Partnerships

In order to register a Cayman Islands partnership as an ELP, the corporate services provider, on behalf of its general partner, must submit to the Registrar of Exempted Limited Partnerships in the Cayman Islands a statement setting out certain prescribed information and pay the appropriate filing fees. A Certificate of Registration issued by the Registrar of Exempted Limited Partnerships is conclusive evidence that the requirements of the ELP Act have been complied with in respect of the formation and registration of an exempted limited partnership.

### Limited Liability Companies

In order to form and register an LLC, a registration statement must be submitted by the corporate services provider to the Registrar of Limited Liability Companies in the Cayman Islands which sets out basic information regarding the

limited liability company and the appropriate filing fees. A Certificate of Registration issued by the Registrar of Limited Liability Companies is conclusive evidence that the requirements of the LLC Act have been complied with in respect of the formation and registration of an LLC.

## Timing

The registration and issue of a Certificate of Incorporation (exempted/resident/non-resident companies) or Certificate of Registration (exempted limited partnerships, limited liability companies) generally takes three to five business days but can be expedited by paying an express fee so that the certificate can be provided within one business day.

## 3.3 Ongoing Reporting and Disclosure Obligations

### General – Companies Act

Companies in the Cayman Islands are subject to certain disclosure and reporting obligations depending on the type of vehicle and the activities undertaken. The Companies Act governs the formation, operation and dissolution of exempted companies.

Exempted companies must have a registered office in the Cayman Islands with a licensed and regulated corporate services provider and are required to file certain documents and information with the Registrar of Companies.

Exempted companies must notify the Register of Companies of any of the following:

- changes to the name of the company;
- any increase in the authorised share capital;
- any reduction in share capital;
- a change of directors and officers;
- a change in the registered office;

- amendments to the memorandum and articles of association of the company; and
- changes to the beneficial ownership register (if any) of the company.

Notices of all special resolutions referenced in the Companies Act that are passed by one or more shareholder(s) of the company must also be filed with the Registrar of Companies within a prescribed timeframe, ie, within 15 days from the effective date of the special resolution.

### Annual Requirements

An annual return (in the case of exempted companies) or an annual list of members and summary of certain specified items relating to share capital (in the case of ordinary companies) must be submitted to the Registrar of Companies in January of the year following incorporation and in each January thereafter, and the appropriate annual fee paid.

### Financial Statements

All companies must keep proper books of account, including, where applicable, material underlying documentation including contracts and invoices. The books of account must be such as are necessary to give a true and fair view of the state of the company's affairs and explain its transactions. The books of account must be retained for a minimum of five years from the date on which they are prepared. A company that knowingly and wilfully contravenes these requirements will be subject to a penalty of USD6,100. The books of account need not necessarily be kept at the registered office, but a company must provide to its registered office, annually or with such other frequency and within such time as may be prescribed, information regarding its books of account. If a company fails to comply with this requirement without a reasonable excuse, it shall incur a penalty of

USD610 and a further penalty of USD122 for every day during which such non-compliance continues. If the company is not a bank, trust company, building society, money services business, credit union, insurance company, corporate manager, mutual fund administrator or regulated fund, its accounts need not be audited as a matter of Cayman Islands law.

## Beneficial Ownership

Cayman Islands ordinary resident companies, ordinary non-resident companies, exempted companies, limited liability companies and limited liability partnerships are required to identify their beneficial owners and certain intermediate holding companies, and maintain a beneficial ownership register at their registered office in the Cayman Islands (except where expressly exempted under the associated legislation with respect to the applicable entity type – see below for further details). Where an entity is exempted from the primary obligations of the beneficial ownership regime, it must provide its corporate services provider with a written confirmation of exemption, which must set out certain specified information.

Exemptions under the Cayman Islands beneficial regime in force at the time of writing include, among others:

- legal entities listed on the Cayman Islands Stock Exchange or another approved stock exchange;
- legal entities registered with, or licensed by, CIMA;
- legal entities which are managed, arranged, administered, operated or promoted by an “approved person” as a special purpose vehicle, private equity fund, collective investments scheme or investment fund;
- legal entities which are regulated in an “equivalent jurisdiction” as an “approved jurisdiction”;
- general partners of certain regulated entities or “approved persons”; and
- legal entities which are substantially owned/controlled subsidiaries of one of the exempted entities listed above.

## Economic Substance Act (As Revised)

The Cayman Islands has enacted economic substance legislation in compliance with the OECD’s Inclusive Framework on Base Erosion and Profit Shifting (BEPS). Where an entity is conducting a “relevant activity” (see below for details) in a “relevant financial period” for the purposes of the Cayman Islands economic substance regime, the entity will be required to (i) file an economic substance notification with the Registrar of Companies before January 31st each year, and (ii) file an economic substance return with the Department for International Tax Cooperation of the Cayman Islands no later than 12 months from the last day of the entity’s financial year end.

The Economic Substance Act applies economic substance requirements to the following categories of geographically mobile “relevant activities” previously identified by the OECD (and adopted by the EU):

- a) banking;
- b) insurance;
- c) shipping;
- d) fund management;
- e) financing and leasing;
- f) headquarters;
- g) distribution and service centres;
- h) holding company; and
- i) intellectual property.

## Automatic Exchange of Financial Account Information

The Cayman Islands has signed an inter-governmental agreement to improve international tax compliance and the exchange of information with the United States (the “US IGA”). The Cayman Islands has also signed a multilateral competent authority agreement to implement the OECD Standard for Automatic Exchange of Financial Account Information – Common Reporting Standard (“CRS” and together with the US IGA, “AEOI”).

Cayman Islands regulations have been issued to give effect to the US IGA and CRS (collectively, the “AEOI Regulations”). Pursuant to the AEOI Regulations, the Cayman Islands Tax Information Authority (the “TIA”) has published guidance notes on the application of the US IGA and CRS.

All Cayman Islands “Financial Institutions” are required to comply with the registration, due diligence and reporting requirements of the AEOI Regulations, unless they are able to rely on an exemption that allows them to become a “Non-Reporting Financial Institution” (as defined in the relevant AEOI Regulations) with respect to one or more of the AEOI regimes, in which case only the registration requirement would apply under CRS. The different types of Non-Reporting Financial Institution under each AEOI regime are specified in the applicable AEOI Regulations.

## Anti-Money Laundering and Countering of Terrorist and Proliferation Financing

In common with other financial centres in the world, the Cayman Islands has enacted legislation that is aligned with international principles in preventing and detecting money laundering (“AML”) and combating terrorist and proliferation financing (“CFT” and “CPF” respectively) and breaches of applicable sanctions regimes.

The legislation is contained principally in the Misuse of Drugs Act (As Revised) of the Cayman Islands, the Proceeds of Crime Act (As Revised) of the Cayman Islands (“PCA”), the Terrorism Act (As Revised) of the Cayman Islands and the Proliferation Financing (Prohibition) Act (As Revised) of the Cayman Islands. These statutes create a number of offences in relation to activities involving the laundering of the proceeds of crime.

The Anti-Money Laundering Regulations (As Revised) of the Cayman Islands (the “AML Regulations”) apply to anyone carrying out “relevant financial business in or from the Cayman Islands”, forming a business relationship or carrying out a one-off transaction. What constitutes “relevant financial business” is set out under section 2 of the PCA and includes, among others, the following activities:

- banking or trust business carried out by a person who is licensed under the Banks and Trust Companies Act (As Revised);
- insurance business and the business of an insurance manager, an insurance agent, or an insurance broker within the meaning of the Insurance Act (As Revised);
- mutual fund administration or the business of a regulated mutual fund within the meaning of the Mutual Funds Act (As Revised); and
- various other investment, financial, trading and lending activities falling within Schedule 6 of the PCA.

The AML Regulations provide that a financial services provider carrying out relevant financial business in or from the Cayman Islands cannot form a business relationship or carry out a one-off transaction, with or for another person unless they maintain certain AML/CFT/CPF/sanctions policies and procedures, having regard to money

laundering, terrorist or proliferation financing and sanctions risks and the size of the business.

### Cayman Islands Sanctions Regime

Sanctions Orders are extended by Statutory Instrument to the British Overseas Territories, including the Cayman Islands, to give effect to sanctions regimes implemented by the United Kingdom Government (“Sanctions Orders”).

Sanctions Orders apply to any person or body incorporated or instituted in the jurisdiction, as well as any British citizen or subject ordinarily resident in the jurisdiction. The Sanctions Orders generally restrain persons from dealing in funds or economic resources owned or controlled by, or making funds or economic resources available to, persons or entities listed under the Order (“Designated Persons”). For example, a fund making a redemption payment to a Designated Person would not be permitted.

### Cayman Islands Country-By-Country Reporting (CbCR)

The Tax Information Authority (International Tax Compliance) (Country-By-Country Reporting) Regulations (As Revised) (the “CbCR Regulations”) implement the requirements of the OECD/G20’s Base Erosion and Profit Shifting Action 13 Report (Transfer Pricing Documentation and Country-by-Country Reporting) (the “Action 13 Report”). The CbCR Regulations largely implement the model legislation (the “OECD Model Legislation”) published pursuant to the Action 13 Report.

The CbCR Regulations apply to any constituent entity (“Constituent Entity”) that is “resident in the Islands” and that forms part of a multinational enterprise group (“MNE Group”) for the purposes of the CbCR Regulations and the related Guidance Notes issued by the Cayman Islands

Department for International Tax Cooperation (“DITC”). A Constituent Entity will be resident in the Islands if it incorporated or established in the Cayman Islands, has a place of effective management in the Cayman Islands or is subject to financial supervision in the Cayman Islands.

An MNE Group is broadly defined as a collection of two or more enterprises required to prepare consolidated financial statements under applicable accounting principles (or would be so required if equity interests in any of the enterprises were publicly traded) that (i) includes two or more enterprises which are “tax resident” in at least two different jurisdictions or includes an enterprise that is tax resident in one jurisdiction and is subject to tax via a permanent establishment in another jurisdiction and (ii) had a total consolidated group revenue of at least USD850 million in the preceding fiscal year.

Any Constituent Entity that is resident in the Cayman Islands and that forms part of an MNE Group will be required to make a notification to the DITC and, if the entity is the “Ultimate Parent Entity” or “Surrogate Parent Entity” of the MNE Group pursuant to the CbCR Regulations, it will also be required to file a country-by-country report with the DITC in a standard form based on the OECD Model Legislation.

### 3.4 Management Structures Companies

Companies are generally managed by a board of directors who are responsible for the overall management and decision-making of the company. Subject to the provision of the memorandum and articles of association for the company, the board of directors: (i) may be appointed by the shareholders and the existing board of directors can appoint additional or replacement directors; (ii) can delegate certain powers to



committees or individual directors; and (iii) may also appoint officers, such as a vice-president, secretary or chief executive officer, to handle the day-to-day operations of the company.

The approval of the company's shareholders is required for certain matters including:

- changing the name of the company;
- amending the memorandum and articles of association;
- approving a merger or consolidation in relation to the company;
- altering the company's share capital;
- approving a transfer by way of continuation to another jurisdiction; and
- winding up the company on a voluntary basis.

The process by which the board of directors holds board meetings (eg, notice, quorum) will be set out in the articles of association of the company and generally decisions are made by way of a simple majority of the directors present at a meeting. The articles also typically provide that the board may take action by way of a unanimous written resolution of the directors in lieu of a meeting, which is considered effective on the date which the last director signs.

### Limited Liability Companies

LLCs are typically managed by their members, or by non-member managers appointed by the members, who shall undertake and have exclusive responsibility for the management, operation and administration of the business and affairs of the LLC, subject to the terms of its LLC agreement.

### Exempted Limited Partnerships

The management and operation of an ELP will typically be set out in its exempted limited partnership agreement entered into between its

general partner and limited partner(s). An ELP must have at least one general partner who is responsible for the management and operation of the ELP. Limited partners are typically passive investors and may lose the benefit of their limited liability if they engage in the conduct of the business of the exempted limited partnership (subject to certain "safe harbour" exceptions, which expressly state that certain actions taken by a limited partner will not be construed as taking part in the management of the partnership).

### 3.5 Directors', Officers' and Shareholders' Liability

The main rules regarding the liability of directors and officers are found in the Companies Act and common law, which include:

#### Directors' Duties

As a matter of Cayman Islands law, a director of a Cayman Islands company is in the position of a fiduciary with respect to the company. Accordingly, directors and officers owe the following fiduciary duties:

- duty to act in good faith in what the director or officer believes to be the best interests of the company as a whole;
- duty to exercise powers for the purposes for which those powers were conferred and not for a collateral purpose;
- directors should not improperly fetter the exercise of future discretion;
- duty to exercise powers fairly as between different sections of shareholders;
- duty to exercise independent judgement; and
- duty not to put themselves in a position in which there is a conflict between their duty to the company and their personal interests.

However, the latter duty above may be varied by the company's articles of association, which may



permit a director to vote on a matter in which the director has a personal interest provided that the director has disclosed the nature of his interest to the board of directors.

In addition to the above, under Cayman Islands law, directors also owe a duty of care which is not fiduciary in nature. This duty has been defined as a requirement to act as a reasonably diligent person having both the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that director in relation to the company and the general knowledge, skill and experience which that director has.

A director (even where appointed by individual shareholders) is obliged to act in a manner which the director believes to be in the best interests of the company as a whole (even though it may not be in the best interests of the appointing shareholder).

### **Breach of Duty**

In the event of a breach of duty, directors may be personally liable to account to the company. Companies often indemnify their directors and officers against any liability incurred in carrying out their functions of being a director, subject to certain exceptions (eg, liability resulting from their own actual fraud or wilful default). Companies may also include provisions in their articles of association that exculpate directors from liability for negligence, default or breach of duty, except in cases of actual fraud or wilful default.

### **Shareholder Liability**

Subject to any express provision in the articles of association of the company to the contrary, a shareholder does not owe any fiduciary duty to the company or to any other shareholder in exer-

cising any rights or authorities, or performing any obligations under the articles of association.

The liability of the shareholders of a company limited by shares is limited to the amount unpaid on the shares held by them.

### **Piercing the Corporate Veil**

The concept “of piercing the corporate veil” is recognised in the Cayman Islands only in exceptional circumstances, which would include, by way of example and without limitation, where a company’s separate legal personality has been used:

- for an illegal or improper purpose; and
- for the purposes of fraud.

## **4. Employment Law**

### **4.1 Nature of Applicable Regulations**

The Labour Act (As Revised) establishes minimum employment standards but does not preclude an employer from setting terms and conditions which are above the minimum. It also establishes remedies for unfair dismissal and entitlement to severance pay, prohibits discrimination and regulates the health, safety and welfare of employees.

The Labour Act requires employers to:

- register the workplace by written notice to the Director of Labour in the Cayman Islands;
- furnish each employee with a written statement of working conditions containing specific information referenced in **4.2 Characteristics of Employment Contracts**;
- provide reasonable training to employees during their probationary period;

- maintain prescribed employee work accounts where there are ten or more employees;
- safeguard the health, ensure the safety, contribute to the welfare and provide special protective measures for employees as specified;
- notify the Director of Labour of major industrial accidents and any occupational disease involving employees;
- not discriminate; and
- provide certain minimum entitlements for employees including:
  - (a) a minimum wage of KYD6.00 (USD7.32) per hour;
  - (b) paid vacation leave (the amount depends on length of service);
  - (c) public holiday pay;
  - (d) up to ten paid sick leave days per year;
  - (e) paid maternity and adoption leave;
  - (f) at least 24 consecutive hours of rest in each seven consecutive days;
  - (g) overtime pay for hours worked in excess of a standard work day/week; and
  - (h) specified advance notice of termination of employment except for certain good causes.

Redress for unfair dismissal may be sought before the Labour Tribunal pursuant to the provisions of the Labour Act. An employee is not precluded from bringing an action at common law (for damages) before the courts of the Cayman Islands. Any compensatory award made by the Labour Tribunal would be deducted from any award for damages made by the court.

The Workmen's Compensation Act (As Revised) provides for the payment of compensation by the employer to any workman who suffers personal injury by accident arising out of and in the course of employment. This is an insurable risk and is normally covered by an employer's insurance.

## 4.2 Characteristics of Employment Contracts

While the Labour Act does not require that an employment contract is entered into between an employer and an employee, the Labour Act requires an employer to furnish each employee with a written statement of working conditions containing the following information:

- the job title, a brief statement of the general responsibilities and duties of the employee and of any special requirements or conditions of the job;
- the regular hours of work, together with any particular terms or conditions relating to the hours of work;
- the rate of remuneration, or the method by which it may be calculated;
- the intervals at which remuneration is to be paid;
- in the case of employees whose pay is normally stated on some basis other than hourly, the hourly equivalent save that in the case of persons remunerated wholly or in part by commission the rate of commission should be stated;
- the period of employment, if other than indefinite;
- the period of probation, if any;
- the employee's holiday entitlement or the method by which it may be calculated;
- the employee's entitlement to sick leave; and
- the length of notice which the employee is obliged to give and is entitled to receive to terminate the contract of employment.

## 4.3 Working Time

There is no minimum or maximum working time applicable to salaried employees.

## 4.4 Termination of Employment Contracts

### Employer's Notice

Unless the contract of employment is for a fixed term, or the dismissal is for good cause, misconduct, or failure to perform duties in a satisfactory manner, every employer must give advance written notice to an employee whose employment it intends to terminate:

- In the case of an employee still serving a probationary period, at least 24 hours' notice must be given; and
- In all other cases the period of notice must at least equal to the interval between pay days (for example if paid every two weeks then two weeks' notice must be given). However, notice need not exceed 30 days in any circumstances, unless the employment contract provides for longer notice.

Once the appropriate advance notice is given, the employer may terminate the employment prior to the effective date so long as the employee is paid an amount equal to that which he would have been paid had he worked throughout the period. This, however, is subject to the provisions regarding severance pay and unfair dismissal dealt with below.

An employee whose employment is terminated by the employer for any reason shall receive payment for each day of unused vacation leave accrued at the time of termination.

### Employee's Notice

The period of notice of termination to be given by the employee is such period as may be required by the employment contract or if not stated in the employee contract, then notice equal to the interval of time between the employee's pay days or 30 days, whichever is less. If

the employee fails to give the appropriate notice the employer may:

- Dismiss the employee prior to the date the employee intended to leave by the number of hours or days by which the notice falls short; and
- Forfeit all unused vacation leave accrued by the employee during the current employment year.

## 4.5 Employee Representations

The Cayman Islands currently has no form of employee representation legislation.

## 5. Tax Law

### 5.1 Taxes Applicable to Employees/Employers

The Cayman Islands currently has no form of income, corporate or capital gains tax and no estate duty, inheritance tax or gift tax.

### 5.2 Taxes Applicable to Businesses

Please refer to 5.1 Taxes Applicable to Employees/Employers.

### 5.3 Available Tax Credits/Incentives

Please refer to 5.1 Taxes Applicable to Employees/Employers.

### 5.4 Tax Consolidation

Please refer to 5.1 Taxes Applicable to Employees/Employers.

### 5.5 Thin Capitalisation Rules and Other Limitations

The Cayman Islands currently has no thin capitalisation rules.

## 5.6 Transfer Pricing

The Cayman Islands currently has no transfer pricing rules.

## 5.7 Anti-evasion Rules

Please refer to **5.1 Taxes Applicable to Employees/Employers**. Taking into account the various taxes that are not applicable in the Cayman Islands, the Cayman Islands also have no anti-evasion rules.

## 6. Competition Law

### 6.1 Merger Control Notification

The Cayman Islands has merger control legislation in respect of the following markets and sectors that are operating and providing services within the Cayman Islands (together, the “Utilities Markets and Sectors”):

- Electricity markets, including the generation, transmission, distribution and supply of electricity;
- Fuels markets;
- Information and Communications Technology markets, including broadcasting and content services; and
- Water sector, including the production, distribution, supply and treatment of water.

The Utility Regulation and Competition Office (“OfReg”) is a body that has been established pursuant to the Utility Regulation and Competition Act (As Revised) (“URCA”), and it has the following responsibilities:

- to promote appropriate, effective and fair competition;
- to protect the short- and long-term interests of consumers in relation to utility services and in so doing:

- (a) supervise, monitor and regulate any service provider providing any of the utility services referenced above;
  - (b) ensure that utility services are satisfactory and efficient and that charges imposed in respect of utility services are reasonable and reflect efficient costs of providing the services; and
  - (c) publish information, reports and other documents relating to utility services (ie, to keep the public informed in respect of the different utilities service providers); and
- to promote innovation and facilitate economic and national development.

### 6.2 Merger Control Procedure

The utilities service provider will have to notify OfReg prior to the merger transaction taking place. The utilities service provider will have to provide OfReg with a description of the transaction together with all corporate and financial due diligence documents of the entities involved in the merger transaction and any beneficial owners in the transaction that hold 15% or more voting interest in the entities involved in the transaction.

For the purpose of approving any merger transaction, OfReg will have consider whether such merger transaction would have material adverse effects on the consumer and citizens of the Cayman Islands.

If the merger transaction will not have a material adverse effect, OfReg is required under URCA to consent to the merger transaction.

If the merger transaction would have adverse effects, OfReg has the option to:

- Declare the merger incompatible and deny its consent;
- Give consent, subject to an order that certain conditions must be satisfied to avoid or eliminate such material adverse effects; or
- Give consent without issuing an order if OfReg is satisfied that the efficiencies put forward by the parties to merger transaction outweigh any potential harm to consumers and citizens of the Cayman Islands.

## 6.3 Cartels

The Cayman Islands has anti-competitive legislation in respect of the utilities markets and sectors. The URCA prohibits the entry into agreements by service providers in the utilities markets and sectors that prevent, restrict or distort competition.

## 6.4 Abuse of Dominant Position

The Cayman Islands currently has no rules governing unilateral conduct and economic dependency.

# 7. Intellectual Property

## 7.1 Patents

### Patents

#### *What may be registered*

The Cayman Islands' patent regime is provided by the Patents Act (2018 Revision) (the "Patents Act"). It provides for the recordal and extension ("extension") of:

- UK-registered patents; and
- UK-designated European Patent Convention ("EPC") patents

to the Cayman Islands.

While the Patents Act contemplates that European Patents with Unitary Effect (Unitary Patents) may also be extended, since the UK's departure from both the European Union and subsequent withdrawal from the Agreement on a Unified Patent Court, it is unlikely that these will be properly registrable with the Cayman Islands Intellectual Property Office ("CIPO") or enforceable at law. It is presently not possible to register new patents (subject to an examination process) in the Cayman Islands.

#### *Rights, subsistence duration*

The owner of an extended patent has (expressly, by law) equivalent rights and remedies to those available in the UK. Such protection and rights will be effective from the time the right arose in the UK and subsist as long as the protections and rights remain in force in the UK, though no local infringement proceeding may be sustained for any actions occurring prior to the local extension. Relevant local fees must be paid to maintain the extension.

#### *Process of extension*

A patent owner, acting through their local registered agent, may apply to the Registrar of Patents to have their patent rights extended to the Cayman Islands, by submitting:

- a copy of the certificate issued by the United Kingdom or other qualifying registry (such as the details of a patent's particulars as obtained from the United Kingdom Intellectual Property Office);
- the form of application as prescribed in the Patents Regulations (As Revised); and
- registration and Cayman Islands Gazette fees.

If the Registrar of Patents is satisfied that the application is in order, they will record the extension of the patent accordingly.

All owners of patents which are (or will be) recorded at the CIPO must have a registered agent in the Cayman Islands. The CIPO maintains a list of approved registered agents for this purpose.

### *Disputes/enforcement*

Disputes in relation to patent infringement (or any other patent-related matter affecting rights or remedies) are heard in the Grand Court of the Cayman Islands. Typical remedies for infringement include declarations, injunctions, damages, or an account of profits, though the full suite of remedies (as would be available in the UK) are available in the Cayman Islands.

If a bad faith assertion of patent infringement is made by any person (including, normally, the owner or licensee), an aggrieved party may bring a claim against the person making the assertion for injunctions, other equitable relief, or damages (including aggravated and/or exemplary damages). The Cayman Islands is a “costs-shifting” or “loser pays” jurisdiction: that is, the losing party typically is obliged to pay the legal costs (or a proportion of them) of the winning party.

## 7.2 Trade Marks

### Trade Marks

The Trade Marks Act (As Revised) (the “Trade Marks Act”) provides for the registration of trade marks, certification marks, and collective marks (collectively the “Marks”) in the Cayman Islands.

The Trade Marks Act defines the different types of Marks as follows:

- “trade mark” means any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of another undertaking and may consist of words, designs,

numerals, letters or the shape of goods or their packaging;

- “certification mark” means a mark indicating that the goods or services in connection with which it is used are certified by the proprietor of the mark in respect of origin, materials, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics; and
- “collective mark” means a mark distinguishing the goods or services of members of an association which is the proprietor of the mark from those of other undertakings.

Applications are made to the CIPO, who maintain the Trade Marks Registry, by a local registered agent. It is no longer possible to extend UK or EU Marks to the Cayman Islands.

Subject to payment of relevant fees (including relevant annual fees), the rights of the mark registration will subsist for ten years from the date of registration, subject to the ability to renew after the initial period. Failure to pay the annual fee by March 31st in any year will result in the rights protected by the registration being suspended from April 1st until the annual fee and any penalty fee have been paid.

The owner, acting through their registered agent, may apply to the Registrar of Trade Marks to have their Mark registered, by submitting:

- a copy of the Mark;
- the form of application in the form set out in the Trade Marks Regulations;
- the classes and description of the goods to be covered; and
- registration and Cayman Islands Gazette fees.



If the Registrar of Trade Marks is satisfied that the application is in order, they will register the Mark.

All applicants for trade marks, or owners of trade mark rights which are (or will be) recorded at the CIPO must have a registered agent in the Cayman Islands. The CIPO maintains a list of approved registered agents for this purpose.

An action for infringement may be brought by the proprietor in the Cayman Islands (and, in certain circumstances, by licensees of the proprietor). Typical remedies for infringement include injunctions, damages, an account of profits, or declarations. Depending on the type of infringement, a proprietor may seek further or other relief, such as removing/obliterating the infringing sign from infringing goods, delivery-up of infringing goods, and/or orders for disposal of infringing material. Like with patents, if groundless threats are made of trade mark infringement, the aggrieved party may have an action against the person making the threat.

As set out above, the Cayman Islands is a “costs-shifting” or “loser pays” jurisdiction: that is, the losing party typically is obliged to pay the legal costs (or a proportion of them) of the winning party.

Apart from registered trade marks, Cayman Islands law provides for an action in “passing off”, which is generally considered protection of “unregistered” trade marks. In the usual course, a passing-off action requires three elements: i) goodwill (generally created by actual trade); ii) misrepresentation; and iii) damage. In the usual course, the misrepresentation is that person B misrepresents their goods are actually the goods of person A (who owns the goodwill), causing person A harm. Similar relief to that available to

trade mark infringement (damages, injunctions, etc.) will usually be available when passing off is established.

## 7.3 Industrial Design

Designs are protected in the Cayman Islands by the Design Rights Registration Act (As Revised) (the “Design Rights Act”) providing for the recordal in, and extension to (“extension”), the Cayman Islands of existing registered UK and EU design rights. The Cayman Islands do not currently have a registrar of origin for design rights. The Design Rights Act does not, therefore, enable design rights to be registered anew in the Cayman Islands.

### Rights, Subsistence, Duration

The owner of an extended design has (expressly, by law) equivalent rights and remedies to those available in the UK. Such protection and rights will be effective from the time the right arose in the UK and subsist as long as the protections and rights remain in force in the UK, though no local infringement proceeding may be sustained for any actions occurring prior to the local extension. Relevant local fees must be paid to maintain the extension.

In relation to EU-derived rights, caution must be exercised that such rights remain in force or otherwise enforceable in the UK post-Brexit as this will expressly limit their enforceability.

### Process of Extension

A design right owner, acting through their local registered agent, may apply to the CIPO to have their design rights extended to the Cayman Islands, by paying the relevant fees and showing that the design right is currently held in the UK and the design right is derived from registration in the UK or the EU.



If the Registrar of Design Rights is satisfied that the application is in order, they will record the extension of the design right accordingly.

All owners of design rights which are (or will be) recorded at the CIPO must have a registered agent in the Cayman Islands. The CIPO maintains a list of approved registered agents for this purpose.

## Disputes/Enforcement

Disputes in relation to design rights infringement (or any other design rights-related matter affecting rights or remedies) are heard in the Grand Court of the Cayman Islands. Typical remedies for infringement include declarations, injunctions, damages, or an account of profits, though the full suite of remedies (as would be available in the UK) are available in the Cayman Islands.

If a bad faith assertion of design rights infringement is made by any person (including, normally, the owner or licensee), an aggrieved party may bring a claim against the person making the assertion for injunctions, other equitable relief, or damages (including aggravated and/or exemplary damages). The Cayman Islands is a “costs-shifting” or “loser pays” jurisdiction: that is, the losing party typically is obliged to pay the legal costs (or a proportion of them) of the winning party.

## 7.4 Copyright

### Copyright

The Copyright (Cayman Islands) Order, 2015 and the Copyright (Cayman Islands) (Amendment) Order, 2016 (together, the “Copyrights Orders”) extend certain provisions of the UK Copyright, Designs and Patents Act 1988 to the Cayman Islands (principally, Part I), subject to some modifications.

The copyright regime provides for the protection of:

- original literary, dramatic, musical, or artistic works (“LDMA”):
  - (a) “literary works” expressly include tables, compilations, computer programs (and their preparatory design materials), and databases;
  - (b) “dramatic works” include works of dance or mime;
  - (c) “musical works” expressly refers to the music (excluding any words or action intended to be sung, spoken, or otherwise performed with the music);
  - (d) “artistic works” includes graphic works (paintings, drawings, diagrams, maps, charts, plans, engravings, etchings, lithographs, woodcuts) photographs, sculptures, collages, works of architecture, or works of artistic craftsmanship;
- sound recordings, films, or certain broadcasts; and
- the typographical arrangement of published editions.

The duration of protection of the copyright varies depending on varying factors (type of work/right, whether the author is known, how the work was made, published, etc). In the usual course, protection for original LDMA works will ordinarily be 70 years beyond the life of the author. Other works tend to vary in protection between 25 and 70 years. It is not currently possible (or necessary) to register a copyright in the Cayman Islands.

Copyright may be enforced by court action, generally in the Grand Court of the Cayman Islands. Remedies for copyright infringement include damages, injunctions, delivery-up of the infringing work, right to seizure of infringing work or any

other remedy that would be available in respect of any other property right. Criminal sanctions for copyright infringement are also available.

## 7.5 Others

Software and databases are principally protected as copyright works (see **7.4 Copyright**). In certain circumstances, the law of confidential information may provide further (possibly overlapping) protection for computer code or algorithms.

Trade secrets are protected by an action for breach of confidence. An action for breach of confidence classically requires three elements:

- that the information itself is properly confidential;
- that the information was imparted in circumstances importing an obligation of confidence;
- that there has been an unauthorised use/misuse of that information.

When a breach of confidence action is made out, typical remedies include injunctions, damages or an account of profits, declarations.

## 8. Data Protection

### 8.1 Applicable Regulations

The Cayman Islands Data Protection Act (As Revised) (the “DPA”) is the main applicable legislation. The DPA is modelled on the UK’s Data Protection Act 1998, with additional elements taken from the EU’s General Data Protection Regulation (“GDPR”). The requirements of the DPA are broadly speaking similar to GDPR, but much less onerous.

### 8.2 Geographical Scope

Like GDPR, the DPA has extraterritorial effect and will apply to any ‘data controller’ (ie, the person or entity which determines what personal data is processed, why and how) which is established in the Cayman Islands, as well as any ‘data controller’ on whose behalf personal data is processed in the Cayman Islands for any purpose other than mere transit.

Thus, the DPA could potentially apply to an overseas business which markets goods/services to Cayman Islands residents, and collects their personal data in doing so. However, the extraterritorial effect of the DPA will not be triggered merely because goods/services are accessible or available to Cayman residents; there must be an indication that the overseas business is actively targeting Cayman Islands residents in marketing its goods/services.

A data controller must comply with, among other things, the data protection principles in respect of the personal data which it processes (or, in the case of an overseas data controller caught by the extraterritorial effect of the DPA, personal data which is processed on its behalf by any ‘data processor’ based in the Cayman Islands).

The data protection principles are broadly speaking similar to the principles set out in Art. 5 of GDPR, and they provide, for example, that personal data must be processed fairly and only for specified lawful purposes, and that personal data must be processed only to the extent adequate/relevant and not excessive, and so on. Other notable requirements of the DPA include the requirement to respond to access/correction requests, and requirement to notify personal data breaches.

The DPA does not apply directly to data processors, but those who wish to appoint data processors are required to ensure that data processors give certain contractual assurances with respect to the personal data that they process.

### 8.3 Role and Authority of the Data Protection Agency

The relevant Cayman Islands regulator is the Ombudsman. Breach of the DPA can lead (variously) to remedial action by the Ombudsman, the imposition of penalties, and criminal sanctions. If, following receipt of a complaint by a data subject, the Ombudsman is satisfied that personal data held by a data controller is inaccurate, the Ombudsman may order the data controller to rectify, block, erase, destroy or update the data. The monetary penalties that the Ombudsman can impose are capped at KYD250,000.

## 9. Looking Forward

### 9.1 Upcoming Legal Reforms Beneficial Ownership Regime

There are certain changes being proposed to the beneficial ownership regime in the Cayman Islands by the Cayman Islands Government following the completion of a recent consultation period with industry. The proposed changes include:

- extending the scope of the beneficial ownership regime to include exempted limited partnerships and limited liability partnerships;
- removing the majority of currently available “exemptions” which are replaced, in the context of certain investment funds, with an option to avail of alternative routes to compliance (being a requirement to file contact details of a fund administrator licensed by CIMA or another contact person for providing beneficial ownership information who is located within the Cayman Islands);
- amendments to the definition of “beneficial owner”; and
- updates to the information that is required to be reported to the Competent Authority in the Cayman Islands for beneficial ownership.

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