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Practical cross-border insights into alternative investment funds work

Alternative Investment Funds 2022

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1 Regulatory Framework

1.1 What legislation governs the establishment and operation of Alternative Investment Funds?

The Mutual Funds Act (As Revised) (the "**MF Act**") provides for the regulation of open-ended investment funds and mutual fund administrators. Responsibility for regulation under the MF Act rests with the Cayman Islands Monetary Authority ("**CIMA**").

The Private Funds Act (As Revised) (the "**PF Act**") provides for the regulation of closed-ended investment funds. Responsibility for regulation under the PF Act rests with CIMA.

In addition, the Retail Mutual Funds (Japan) Regulations (As Revised) (the "**Japan Regulations**") provide a regulatory regime for retail mutual funds that are marketed to the public in Japan.

CIMA has also published rules and guidance regarding certain operational requirements for CIMA registered mutual funds and private funds, including in respect of the valuation of assets, safekeeping of fund assets, cash monitoring and identification of securities.

Although not Cayman Islands law, the broad scope and extra-territorial effect of the EU Directive on Alternative Investment Fund Managers ("**AIFMD**") will capture most types of Cayman Alternative Investment Funds, regardless of whether they are open-ended or closed-ended and regardless of their legal structure and investment strategy, with very few exceptions, to the extent that they are being marketed or managed in Europe (as such terms are defined for the purposes of the AIFMD). Legislation for AIFMD consistent regimes for Cayman Islands funds and their managers was introduced in 2019, which enable Cayman Islands AIFs and AIFMs to "opt in" to take full advantage of the AIFMD if and when the AIFMD passport is extended to the Cayman Islands. The legislation also contemplates a CIMA notification regime for CIMA licensed managers and any fund managed by a manager registered in an EU Member State or being marketed to investors in an EU Member State.

1.2 Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

Generally, there is no local restriction on or regulation of a manager or adviser from another jurisdiction managing an Alternative Investment Fund established as a Cayman Islands vehicle. However, a manager or adviser which is itself established or, in the case of a foreign company, registered in the Cayman Islands and which conducts "securities investment business" ("**SIB**"), whether or not that securities investment business is carried on in the Cayman Islands, will fall within the scope of the Securities Investment Business Act (As Revised) ("**SIBA**").

SIB is defined as being engaged in the course of business in any one or more of the activities set out in Schedule 2 to SIBA. Those activities include managing securities belonging to another person on a discretionary basis and advising in relation to securities, but only if the advice is given to someone in their capacity as investor or potential investor or in their capacity as agent for an investor or a potential investor and the advice is on the merits of that person (whether acting as principal or agent) buying, selling, subscribing for or underwriting a particular security or exercising any right conferred by a security to buy, sell, subscribe for or underwrite a security. "Securities" are defined to include most forms of shares and stock, debt instruments, options, futures, contracts for differences, and derivatives.

Schedule 3 to SIBA specifically excludes certain activities from the definition of SIB, although those exclusions are unlikely to apply to a person conducting discretionary investment management or investment advisory activities.

Any person within the scope of SIBA conducting SIB must be licensed by CIMA, unless that person is registered as a "Registered Person" under SIBA. A licence may be restricted (meaning that SIB may only be transacted with particular clients) or unrestricted. A licence may also be issued subject to conditions or may be unconditional.

A person carrying on SIB may be exempt from the requirement to obtain a licence but will still be required to be registered as a "Registered Person" under SIBA. In the case of Registered Persons, which is likely to apply to fund managers or advisers, they are required to register with CIMA by filing a declaration and paying a fee of CI$5,000 (approximately US$6,097.56), prior to carrying on SIB and annually thereafter, confirming that they are entitled to rely on the relevant exemption.

A "Registered Person" includes:

(a) a company carrying on SIB exclusively for one or more companies within the same group;

(b) a person carrying on SIB exclusively for one or more of the following classes of person:

(i) a sophisticated person (i.e., a person regulated by CIMA or a recognised overseas regulatory authority or whose securities are listed on a recognised securities exchange or who by virtue of knowledge and experience in financial and business matters is reasonably to be regarded as capable of evaluating the merits of a proposed transaction and participates in a transaction with a value or in amounts of at least US$100,000 in each single transaction);
(ii) a high-net-worth person (i.e. an individual whose net worth is at least US$1 million or any person that has any assets of not less than US$5 million); or
(iii) a company, partnership or trust of which the shareholders, limited partners or unitholders are all sophisticated persons or high-net-worth persons,

provided always that such person has a registered office or a place of business in the Cayman Islands provided by a licensed corporate services provider (such as, for example, Maples Corporate Services Limited); and

(c) a person who is regulated by a recognised overseas regulatory authority in the country or territory (other than the Cayman Islands) in which the SIB regulated activity is being conducted.

1.3 Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

An investment fund qualifies as a "mutual fund" and is required to be regulated under the MF Act if:

(a) it is a company, partnership or unit trust carrying on business in or from the Cayman Islands;
(b) it issues "equity interests" to investors (i.e. shares, partnership interests or trust units that carry an entitlement to participate in profits or gains and which may be redeemed or repurchased at the option of those investors prior to winding up); and
(c) its purpose or effect is the pooling of investor funds with the aim of spreading investment risks and enabling investors to receive profits or gains from investments.

There are four categories of mutual funds:

(1) a licensed fund under section 4(1)(a) of the MF Act;
(2) an administered fund under section 4(1)(b) of the MF Act;
(3) a registered fund under section 4(3) of the MF Act; and
(4) a limited investor fund under section 4(4) of the MF Act.

(1) A mutual fund licence will be granted if CIMA considers that the promoter is of sound reputation, there exist persons of sufficient expertise to administer the fund, who are of sound reputation, and that the business of the fund and any offer of equity interests will be carried out in a proper way. Detailed information is required concerning the directors, trustee or general partner ("**GP**") of the mutual fund (as the case may be) and the service providers. However, few investment funds are fully licensed under the MF Act, as this is generally only necessary for retail funds.
(2) Registration as an administered fund requires the designation of a Cayman Islands licensed mutual fund administrator as the fund's principal office. The administrator must satisfy itself that the fund's promoters are of sound reputation, that the fund's administration will be undertaken by persons with sufficient expertise who are also of sound reputation and that the fund's business and its offering of equity interests will be carried out in a proper way. The administrator is obliged to report to CIMA if it has reason to believe that a mutual fund for which it provides the principal office (or any promoter, director, trustee or GP thereof) is acting in breach of the MF Act or may be insolvent or is otherwise acting in a manner prejudicial to its creditors or investors. This imposes a quasi-regulatory role and an obligation to monitor compliance on the administrators themselves, and generally higher fees charged by administrators in relation to this category of investment fund.
(3) Mutual funds registered under section 4(3) of the MF Act are divided into three sub-categories:
(a) where the minimum investment per investor is at least US$100,000;
(b) where the equity interests are listed on a recognised stock exchange; or
(c) where the mutual fund is a "master fund" (as defined in the MF Act) and either:
(i) the minimum investment per investor is at least US$100,000; or
(ii) the equity interests are listed on a recognised stock exchange.
(4) Limited investor funds registered under section 4(4) of the MF Act have 15 or fewer investors, a majority in number of whom have the power to appoint and remove the fund's directors, GP or trustee, as applicable.

A master fund is a Cayman Islands entity that issues equity interests to at least one feeder fund (either directly or through an intermediate entity established to invest in the master fund) that is itself regulated by CIMA under the MF Act that holds investments and conducts trading activities for the principal purpose of implementing the overall investment strategy of the regulated feeder.

An investment fund qualifies as a "private fund" and is required to be regulated under the PF Act if it is a company, unit trust or partnership that offers or issues or has issued investment interests (being interests that are *not* redeemable or repurchasable at the option of the investor), the purpose or effect of which is the pooling of investor funds with the aim of enabling investors to receive profits or gains from such entity's acquisition, holding, management or disposal of investments, where:

(a) the holders of investment interests do not have day-to-day control over the acquisition, holding, management or disposal of the investments; and
(b) the investments are managed as a whole by or on behalf of the operator of the private fund, directly or indirectly, but does not include:
(i) a person licensed under the *Banks and Trust Companies Act (As Revised)* or the *Insurance Act (As Revised)*;
(ii) a person registered under the *Building Societies Act* (*As Revised*) or the *Friendly Societies Act (As Revised)*; or
(iii) any non-fund arrangements.

1.4 Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity *vs* hedge)) and, if so, how?

Yes, open-ended funds are governed by the MF Act and closed-ended funds are governed by the PF Act. The key distinction between open-ended and closed-ended funds is the ability of investors to voluntarily redeem or repurchase some or all of their investment prior to winding up.

1.5 What does the authorisation process involve for managers and, if applicable, Alternative Investment Funds, and how long does the process typically take?

Generally, there is no authorisation process for managers from another jurisdiction managing an Alternative Investment Fund established as a Cayman Islands vehicle. However, if a manager is established in or, in the case of a foreign company, registered in the Cayman Islands, which acts as the investment manager to an Alternative Investment Fund, such manager may be subject to licensing or registration with CIMA under SIBA (see question 1.2 for further details on the authorisation process under SIBA).

For Alternative Investment Funds, CIMA has established a secure Regulatory Enhanced Electronic Forms Submission (REEFS) web portal, which enables the online submission of mutual fund and private fund applications and documentation. An application for a section 4(3) mutual fund, limited investor and private fund involves the submission of:

(a) the fund's offering document, other than (i) in the case of a master fund, which will often not have an offering document separate from that of its feeder fund(s), and (ii) in the case of a private fund and a limited investor fund, a summary of terms or marketing materials may be submitted if the fund does not have an offering document;
(b) the relevant statutory application form;
(c) consent letters from the fund's auditor and administrator (except in respect of a private fund that does not engage an external administrator);
(d) the relevant fees (currently a registration fee of US$4,268, initially and annually, and a separate application fee of US$366, other than in the case of a master fund which has a registration fee of currently US$3,049 initially and annually;
(e) for section 4(3) mutual funds only, an affidavit or declaration signed by an operator of the fund relating to the authorisation of submission of the online application; and
(f) a structure diagram for private funds.

CIMA's practice with these funds is to make the effective date of the application the date on which all application requirements have been submitted. For a regulated mutual fund, an application must be completed prior to the fund's launch. For a private fund, an application must be submitted to CIMA within 21 days after its acceptance of capital commitments from investors or, if earlier, prior to the private fund receiving any capital contributions for the purposes of investments.

The application process is more involved for licensed and administered mutual fund applications.

1.6 Are there local residence or other local qualification or substance requirements for managers and/or Alternative Investment Funds?

Generally, there are no local residence or other local qualification or substance requirements for managers from another jurisdiction managing an Alternative Investment Fund established as a Cayman Islands vehicle. However, if a manager is established in or, in the case of a foreign company, registered in the Cayman Islands, which acts as the investment manager to an Alternative Investment Fund, such manager may be subject to licensing or registration with CIMA under SIBA (see question 1.2 for further details on the applicable requirements under SIBA). Such managers acting as a discretionary manager of an Alternative Investment Fund may also be subject to local substance requirements under the Cayman Islands International Tax Co-operation (Economic Substance) Act (As Revised) (see question 6.7 for further details).

For Alternative Investment Funds, each Cayman Islands regulated mutual fund and private fund must appoint a local auditor approved by CIMA.

The Directors Registration and Licensing Act (As Revised) (the DRLA) requires that the directors (both natural persons and corporate directors) of a corporate mutual fund regulated by CIMA or a certain type of "Registered Person" registered with CIMA under SIBA be either registered or licensed with CIMA. The registration process is undertaken online at the "CIMA Director Gateway".

1.7 What service providers are required?

Every regulated mutual fund and private fund must have an approved local auditor and will generally have an investment manager/adviser and, more so for regulated mutual funds, an administrator (which, for an administered mutual fund, must be a licensed mutual fund administrator).

Although not required, it is becoming market practice for corporate regulated investment funds to appoint independent directors. Such independent directors are not required to be based in the Cayman Islands but often are, due to the depth of the Cayman Islands fiduciary services industry.

1.8 What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?

Provided that the activities of a foreign manager/adviser, including any transactions entered into, have not been and will not be carried on through a place of business in the Cayman Islands, or the fund is not subject to the Japan Regulations, there are no additional rules.

1.9 What relevant co-operation or information sharing agreements have been entered into with other governments or regulators?

The Cayman Islands has Tax Information Exchange Agreements and similar bilateral arrangements with 36 countries as of May 2022 and is on the OECD "white list" with respect to the exchange of tax information. In addition, CIMA has entered into bilateral regulatory cooperation agreements pursuant to the AIFMD with the competent authorities of 27 of the EU and EEA Member States. Please also see the description of FATCA/CRS under question 6.6.

2 Fund Structures

2.1 What are the principal legal structures used for Alternative Investment Funds (including reference where relevant to local asset holding companies)?

The three types of vehicles most commonly utilised by Cayman Islands investment funds are: exempted companies; exempted limited partnerships ("**ELPs**"); and exempted unit trusts. The term "exempted" in this context means that the vehicle is eligible to apply to the Cayman Islands government for an undertaking (lasting 20 or 50 years depending on the type of vehicle) that if any taxation is introduced in the Cayman Islands during the period to which the undertaking applies, such taxation will not apply to the vehicle in question.

Cayman Islands introduced limited liability companies ("**LLCs**"), which broadly operate in a similar manner to Delaware limited liability companies, may be used in fund structures; however, we have not seen them used extensively to date for open-ended funds.

Exempted companies are the most common vehicle for open-ended funds (including master funds). Exempted companies are also the vehicle of choice for asset holding companies set up in the Cayman Islands.

However, it is not common to see closed-ended funds established in the Cayman Islands as exempted companies. The ELP is usually the vehicle of choice for closed-ended or private equity funds.

The Cayman ELP concept is similar to that which applies in the United States and indeed the Exempted Limited Partnership Act (As Revised) (the "ELP Act") is based substantially on the Delaware equivalent (although a Cayman Islands partnership is not a separate legal person). While exempted companies are extremely flexible in the extent to which voting and economic rights can be mixed and matched across separate classes of shares, companies have certain limitations that do not apply to ELPs. Fewer statutory rules govern the approvals processes within an ELP, which makes them generally more flexible and suitable for closed-ended vehicle purposes.

Unit trusts are the vehicle primarily used for investors in Japan, where the demand is driven by familiarity with the unit trust structure and historical local tax benefits relating to trust units as opposed to other forms of equity interest.

2.2 Do any of the legal structures operate as an umbrella structure with several sub-funds, and if yes, is segregation of assets between the sub-funds a legally recognised feature of the structure?

Yes. There are two Cayman Islands vehicles that may operate as an umbrella structure having several sub-funds: (1) the Segregated Portfolio Company ("**SPC**"); and (2) the Umbrella Unit Trust.

The SPC is a company established under the Companies Act (As Revised) of the Cayman Islands that permits the creation of 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. The segregation of assets and liabilities of a segregated portfolio with an SPC structure is legally recognised under Cayman Islands law. Certain statutory duties are imposed on the directors of the SPC to establish and maintain procedures to segregate the assets and liabilities as between segregated portfolios. There are also certain statutory requirements that must be adhered to when executing documents involving SPCs. It should also be noted that it is not necessarily the case that the laws of other jurisdictions will recognise the limitation of recourse provided for SPCs.

The Umbrella Unit Trust is established under a master trust deed and subject to the Trust Act (As Revised) of the Cayman Islands, which consists of a master trust and permits the creation of one or more separate series trusts. Each series trust is structured to act as a separate sub-fund whereby the assets and liabilities of the relevant series trust are contractually segregated from the assets and liabilities of another series trust within the Umbrella Unit Trust. Unlike an SPC, however, the Umbrella Unit Trust does not have separate legal personality. The Trustee acts as principal in respect of the Umbrella Unit Trust and will be liable for all of the debts and obligations of the Umbrella Unit Trust to the extent the trust assets are insufficient. The master trust deed will generally include a requirement to ensure contracts with third parties include appropriate limited recourse wording to limit the liability of the relevant series trust to such third party to the Trustee's ability to be indemnified out of the trust assets of that particular series trust and, once exhausted, the liability of the Trustee to such third party is extinguished.

2.3 Please describe the limited liability of investors in respect of different legal structures and fund types (e.g. PE funds and LPACs).

The limited liability of investors in a Cayman Islands investment fund depends upon the nature of the vehicle used and whether the investor has agreed to contribute additional funds to that vehicle pursuant to the terms of the governing documentation.

With exempted companies limited by shares, the liability of the investors is limited to the amount unpaid on their shares pursuant to the constitutional documents of the company and in accordance with the Companies Act (As Revised).

Limited partners ("**LPs**") of an ELP shall not be liable for the debts or obligations of the ELP under the ELP Act, (a) save as provided by the terms of the applicable partnership agreement, and (b) subject to the provisions of the ELP Act (i) providing that an LP who takes part in the conduct of the business of the ELP may lose its limited liability with respect to a third party who deals with that ELP and who reasonably believes such LP to be a GP of such ELP, and (ii) providing for clawback of capital distributions (together with interest) made to an LP within six months of the ELP becoming insolvent where the LP had actual knowledge of the insolvency.

Investors who are unitholders of an exempted trust must look to the wording of the relevant declaration of trust to provide them with limited liability status and protection.

Despite the limited liability nature of an equity interest purchased by an investor, it is common practice for the subscription and certain transaction documents of Cayman Islands investment funds to impose payment obligations on investors over and above the obligation to pay for their investment. Such additional obligations regularly include indemnification for misrepresentations and the requirement to repay excess redemption or withdrawal proceeds which were calculated and paid on the basis of unaudited data.

2.4 What are the principal legal structures used for managers and advisers of Alternative Investment Funds?

The principal structures are exempted companies and LLCs.

2.5 Are there any limits on the manager's ability to restrict redemptions in open-ended funds or transfers in open-ended or closed-ended funds?

Not as a general matter of Cayman Islands law; the ability to redeem or transfer equity interests in a fund and any restrictions will be governed by the governing documents.

2.6 Are there any legislative restrictions on transfers of investors' interests in Alternative Investment Funds?

Not as a general matter of Cayman Islands Law, subject to restrictions on the assignment of certain liabilities by LPs pursuant to the ELP Act or the transferee meeting any

minimum investment requirements that may apply. Proposed transferees will need to satisfy applicable Know Your Client and Anti-Money Laundering requirements. Sanctions imposed by the Cayman Islands and internationally will also needed to considered in respect of any transferor or transferee.

2.7 Are there any other limitations on a manager's ability to manage its funds (e.g. diversification requirements, asset stripping rules)?

Not as a general matter of Cayman Islands law (assuming that the fund is not subject to the Japan Regulations).

2.8 Does the fund remunerate investment managers through management/performance fees or by a combination of management fee and carried interest? In the case of carried interest, how is this typically structured?

Remuneration of the investment manager is ultimately a commercial matter for the particular fund. For open-ended funds, the investment manager is typically remunerated through a combination of a management fee (typically between 1% and 2% of the fund's NAV) and a performance fee (typically between 15% and 20% of the net increase in the fund's NAV). For closed-ended funds, the general partner or its delegate will typically receive a management fee and the general partner will typically receive carried interest. The carried interest is generally paid to the general partner under a waterfall arrangement whereby the carried interest is only paid after investors have received their preferred return.

3 Marketing

3.1 What legislation governs the production and use of marketing materials?

The MF Act requires that every regulated mutual fund issue an offering document which must describe the equity interests in all material respects and contain such other information as is necessary to enable a prospective investor to make an informed decision whether or not to invest. CIMA has also issued a rule relating to the contents of offering documents for all funds licensed or registered under the MF Act.

For private funds registered under the PF Act, to the extent any offering document (or other document that solicits investors to invest in a private fund) is issued to investors, it must comply with CIMA's rule on the contents of marketing materials.

The Japan Regulations also set out additional disclosure requirements for the prospectus of a retail mutual fund, which are more onerous.

3.2 What are the key content requirements for marketing materials, whether due to legal requirements or customary practice?

An offering document of a regulated mutual fund must contain the disclosures set out in CIMA's rule on the contents of offering documents, which include the following:

(a) details of the name of the fund, date of establishment of the fund, its registered office, fiscal year and its operator together with biographies;
(b) a description of the fund's investment objectives, policy, and restrictions;
(c) a description of the fund's investment manager or adviser, together with biographies of the portfolio managers and information regarding remuneration;
(d) the names and addresses of the fund's other service providers, together with details of the services to be performed and remuneration;
(e) the classes of interests available for investment or issue, together with descriptions of any minimum investment, eligibility requirements and subscription procedures;
(f) details of the principal rights and restrictions attaching to the fund's equity interests, including with respect to currency, voting, circumstances of winding up or dissolution and the procedures and conditions for repurchases, redemptions or withdrawals of such equity interests, including suspensions;
(g) the NAV calculation policy; and
(h) details of the fund's material risks and potential conflicts of interest.

Where a private fund has an offering document or marketing materials, CIMA's rule on the contents of marketing materials also applies. A private fund's offer document (if any) or summary of terms (required for registration under the PF Act) should contain, as a minimum, the name and address of the fund, the name and address of the general partner (if the fund is an ELP), the name, address and biographies of the principals of the operators of the fund, the name and address of the manager, the name, address and biographies of the principals/senior officers of the manager, the base currency of offering, the minimum investment, the valuation policy, the applicable audit principles, the financial year end, the term, the investment strategy, applicable risk factors and conflicts of interest, applicable Cayman Islands laws and regulations (including the anti-money laundering regulations), and the name and address of the administrator (if any), the custodian (if any), the auditor, the Cayman Islands legal adviser and registered office service provider.

3.3 Do the marketing or legal documents need to be registered with or approved by the local regulator?

The offering document of a registered mutual fund must be filed with CIMA as part of the initial application; however, it is not technically subject to approval by CIMA prior to its circulation to prospective investors. An amended offering document or supplement must be filed with CIMA within 21 days in the event of material changes, where there is a continuing offering.

A private fund is required to submit an offer document (if any) or a summary of terms for registration under the PF Act. Details of any material changes to the information submitted on the registration of a private fund must be filed with CIMA within 21 days of such change (or becoming aware of such change).

3.4 What restrictions (and if applicable, ongoing regulatory requirements) are there on marketing Alternative Investment Funds?

Generally, no offer or invitation to subscribe for equity interests in a Cayman Islands investment fund may be made to the "public in the Cayman Islands". The range of persons that may be considered excluded from the "public in the Cayman Islands" will depend upon the fund's legal structure and whether or not the fund is regulated under the MF Act or the PF Act, but it is generally likely that Cayman Islands exempted companies, LLCs, ELPs and exempted trusts engaged in offshore business and foreign companies registered in the Cayman Islands will not be considered part of the "public in the Cayman Islands".

Prior to the filing for registration of a private fund with CIMA, the private fund may only be marketed to high-net-worth or sophisticated persons.

3.5 Is the concept of "pre-marketing" (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?

No, it is not.

3.6 Can Alternative Investment Funds be marketed to retail investors (including any specific treatment for high-net-worth individuals or semi-professional or similar categories)?

Yes, in respect of section 4(1)(a) or section 4(1)(b) funds under the MF Act. In respect of section 4(3) mutual funds, yes, subject to the US$100,000 minimum investment or the equity interests being listed on a recognised stock exchange. There is no statutory minimum investment amount for a private fund.

3.7 What qualification requirements must be met in relation to prospective investors?

Potential investors will be subject to due diligence and sanction checks in accordance with the Cayman Islands' anti-money laundering regime.

3.8 Are there additional restrictions on marketing to public bodies such as government pension funds?

No, there are not.

3.9 Are there any restrictions on the participation in Alternative Investments Funds by particular types of investors (whether as sponsors or investors)?

No, there are not.

3.10 Are there any restrictions on the use of intermediaries to assist in the fundraising process?

No, there are not.

4 Investments

4.1 Are there any restrictions on the types of investment activities that can be performed by Alternative Investment Funds?

There are no such restrictions on investment strategy subject to applicable local regulatory laws.

4.2 Are there any limitations on the types of investments that can be included in an Alternative Investment Fund's portfolio, whether for diversification reasons or otherwise?

No, there are not.

4.3 Are there any local regulatory requirements which apply to investing in particular investments (e.g. derivatives or loans)?

No, there are not.

4.4 Are there any restrictions on borrowing by the Alternative Investment Fund?

No, there are no such restrictions (assuming that the fund is not subject to the Japan Regulations).

4.5 Are there are any restrictions on who holds the Alternative Investment Fund's assets?

There are no such restrictions on mutual funds regulated under the MF Act. However, regulated mutual funds are required to comply with CIMA's rules relating to Net Asset Value Calculation and the Segregation of Assets.

Private funds regulated under the PF Act are also subject to CIMA's rules relating to Net Asset Value Calculation and the Segregation of Assets. Further, a private fund is required to appoint a custodian unless it has notified CIMA and it is neither practical nor proportionate to do so having regard to the nature of the private fund and the type of assets it holds. If no custodian is appointed, a private fund must appoint an administrator or another independent third party or (subject to disclosing and managing any conflicts) the operator or investment manager/adviser to verify that the private fund holds title to its assets, and to maintain a record of those assets.

5 Disclosure of Information

5.1 What disclosure must the Alternative Investment Fund or its manager make to prospective investors, investors, regulators or other parties, including on environmental, social and/or governance factors?

There are no public disclosure requirements for exempted companies or trusts. Although such vehicles are required to maintain statutory registers and make certain filings with the Cayman Islands Registrar and CIMA, those registers and filings are not available to inspection by the general public.

The register of limited partnership interests of an ELP is required by the ELP Act to be open to inspection during all business hours by all partners, subject to any express or implied term to the contrary of the limited partnership agreement, or by any other person with the consent of the GP.

While there is currently no local regulation requiring disclosure for funds engaged in environmental, social and/or governance ("**ESG**") factors, interest from both investors and managers regarding these factors has resulted in additional voluntary disclosure by such funds. However, late last year, the Cayman Islands Government announced that it is working on a legislative framework for the implementation of ESG factors criteria for investment funds.

5.2 Are there any requirements to provide details of participants (whether owners, controllers or investors) in Alternative Investment Funds or managers established in your jurisdiction (including details of investors) to any local regulator or record-keeping agency, for example for the purposes of a public (or non-public) register of beneficial owners?

The Cayman Islands beneficial ownership regime ("**BOR**")

requires certain exempted companies and LLCs (but not ELPs) to maintain non-public registers of beneficial owners at their Cayman Islands registered offices, which are then submitted to a competent authority designated by the Cayman Islands Government. However, BOR does not apply to CIMA regulated mutual funds and entities that are managed, arranged, administered, operated or promoted by an "approved person" (generally a regulated or listed person or subsidiary of such person) as a special purpose vehicle, private equity fund, collective investment scheme or investment fund.

5.3 What are the reporting requirements to investors or regulators in relation to Alternative Investment Funds or their managers, including on environmental, social and/or governance factors?

Regulated mutual and private funds are required to file, in electronic format, audited financial statements, an annual Key Data Elements Form (containing a summary of the basic information about the fund) and a Fund Annual Return ("**FAR**"), in each case within six months of the financial year end. The FAR provides general, operating and financial information relating to such regulated funds. Certain additional requirements apply to funds subject to the Japan Regulations.

A manager registered as a "Registered Person" pursuant to SIBA is required to make an annual filing confirming its status with CIMA but does not otherwise have any reporting requirements.

See question 5.1 regarding ESG factors.

5.4 Is the use of side letters restricted?

No. Side letters are commonly used by Cayman Islands investment funds although certain legal considerations should be borne in mind in order to ensure that such letter agreements are compliant with Cayman Islands law.

6 Taxation

6.1 What is the tax treatment of the principal forms of Alternative Investment Funds and local asset holding companies identified in question 2.1?

The Cayman Islands imposes no taxation on the income or capital gains of investment funds or their investors and no transfer taxes on the transfer of interests in investment funds or local asset holding companies. As discussed above, "exempted" companies, ELPs, unit trusts and LLCs can obtain undertakings from the Cayman Islands government that if any taxation is introduced during the period of the undertaking, such taxation will not apply to the entity to which the undertaking is given.

6.2 What is the tax treatment of the principal forms of investment manager/adviser identified in question 2.4?

Please see question 6.1.

6.3 Are there any establishment or transfer taxes levied in connection with an investor's participation in an Alternative Investment Fund or the transfer of the investor's interest?

No, there are none.

6.4 What is the local tax treatment of (a) resident, (b) non-resident, and (c) pension fund investors (or any other common investor type) in Alternative Investment Funds?

There is no distinction from a Cayman Islands perspective – please see question 6.1.

6.5 Is it necessary or advisable to obtain a tax ruling from the tax or regulatory authorities prior to establishing an Alternative Investment Fund or local asset holding company?

No, it is not.

6.6 What steps have been or are being taken to implement the US Foreign Account and Tax Compliance Act 2010 (FATCA) and other similar information reporting regimes such as the OECD's Common Reporting Standard?

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, along with over 100 other countries, 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 AEOI Regulations require funds to, among other things (i) register with the Internal Revenue Service ("**IRS**") to obtain a Global Intermediary Identification Number (in the context of the US IGA only), (ii) register with the TIA, and thereby notify the TIA of its status as a "Reporting Financial Institution", (iii) adopt and implement written policies and procedures setting out how it will address its obligations under CRS, (iv) conduct due diligence on its accounts to identify whether any such accounts are considered "Reportable Accounts", (v) report information on such Reportable Accounts to the TIA, and (vi) file a CRS Compliance Form with the TIA. The TIA will transmit the information reported to it to the overseas fiscal authority relevant to a reportable account (e.g. the IRS in the case of a US Reportable Account) annually on an automatic basis.

6.7 What steps have been or are being taken to implement the OECD's Action Plan on Base Erosion and Profit-Shifting (BEPS), in particular Actions 2 (hybrids/reverse hybrids/shell entities) (for example ATAD I, II and III), 6 (prevention of treaty abuse) (for example, the MLI), and 7 (permanent establishments), insofar as they affect Alternative Investment Funds' and local asset holding companies' operations?

Country-By-Country Reporting

As part of the Cayman Islands' ongoing commitment to international tax transparency, the Tax Information Authority (International Tax Compliance) (Country-By-Country Reporting)

Regulations (As Revised) (the "**CbCR Regulations**") were issued on 15 December 2017, with the Department for International Tax Cooperation releasing its Guidance on the Country-by-Country Reporting ("**CbCR**") requirements of entities that are resident in the Cayman Islands on 29 March 2018.

The CbCR Regulations essentially implement in the Cayman Islands the model legislation published pursuant to the OECD's Base Erosion and Profit Shifting Action 13 Report (Transfer Pricing Documentation and Country-by-Country Reporting). The CbCR Regulations also reflect the Cayman Islands' obligations under the OECD Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (the "**CbC MCAA**").

Pursuant to this initiative, qualifying multinational enterprises ("**MNEs**") are required to report annually the information set out in the model legislation for each tax jurisdiction in which they operate. The TIA will automatically exchange such reports prepared by MNE Groups in the Cayman Islands with partner jurisdiction competent authorities in all jurisdictions that the MNE Group operates, provided that the jurisdiction is a co-signatory to the CbC MCAA or a tax information exchange agreement is in place between the Cayman Islands and each relevant jurisdiction. The information reported will be subject to confidentiality restrictions compliant with the requirements of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

Pursuant to the CBCR Regulations, any business unit or permanent establishment of an MNE Group "resident in the Cayman Islands" that are "Constituent Entities" will have registration and/or reporting requirements in the Cayman Islands. An MNE Group means, broadly, with respect to any fiscal year of the Group, a Group that has two or more enterprises for which the tax residence is in different jurisdictions or that has an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax through a permanent establishment in another jurisdiction and, in both cases, that has a total consolidated group revenue of equal to or more than US$850 million during its preceding fiscal year.

Lack of tax treaties

As a Cayman Islands fund or local asset holding company will not be claiming access itself to a tax treaty, Action 6 is not directly relevant to it. However, a Cayman Islands fund or local asset holding company can be set up in a variety of different legal forms, either as legally transparent or opaque, which facilitate cross-border fund structures, whereby either the fund investors or the fund itself (in respect of a local asset holding company) may rely on their own treaty or through investment entities that may be able to rely on their own treaty.

Economic substance

In response to the BEPS standards on geographically mobile activities, on 27 December 2018, the Cayman Islands published The International Tax Co-operation (Economic Substance) Act (As Revised) and The International Tax Co-operation (Economic Substance) (Prescribed Date) Regulations (As Revised) (together, the "**Initial Act**"). The Initial Act was amended by several amendment regulations, which were subsequently consolidated into the International Tax Co-operation (Economic Substance) Act (As Revised) (the "**Economic Substance Act**"). The Economic Substance Act is supplemented by the issuance of the related Guidance on Economic Substance for Geographically Mobile Activities.

The Economic Substance Act introduces certain reporting and economic substance requirements for "relevant entities" conducting "relevant activities". Such entities will be required to report certain information on their relevant activities on an annual basis to the TIA, the first such annual report being due no later than 12 months after the last day of the relevant entity's financial year commencing on or after 1 January in the year it commences a relevant activity.

The definition of "relevant entity" is set out in the Regulations and was expanded in 2021 to include partnerships. It expressly recognises that, among other things, an entity that is an "investment fund" is not within the classification of a "relevant entity" and therefore not subject to the requirements of the Economic Substance Act.

The definition of "investment fund" includes an "entity through which an investment fund directly or indirectly invests or operates", which would include a local asset holding company wholly owned by the fund.

6.8 Are there any tax-advantaged asset classes or structures available? How widely are they deployed?

Not applicable – please see question 6.1.

6.9 Are there any other material tax issues for investors, managers, advisers or AIFs?

No, there are not.

6.10 Are there any meaningful tax changes anticipated in the coming 12 months other than as set out at question 6.6 above?

No, there are not.

7 Trends and Reforms

7.1 What have been the main trends in the Alternative Investment Funds space in the last 12 months?

The number of both regulated mutual funds and private funds has increased steadily during the past 12 months, amounting to over 27,000 by the end of 2021. The number of CIMA regulated mutual funds increased by 6.9% during the course of 2021, from 11,896 in December 2020 to 12,719 in December 2021. Limited investor funds (a form of mutual fund with 15 or fewer investors) have been required to register with CIMA under the MF Act since 2020. Representing growth of over 15% during the course of 2021, 89 additional limited investor funds were registered with CIMA in 2021, bringing the total number of limited investor funds to 672 by the end of 2021.

Private funds, which outnumbered regulated mutual funds, increased at a higher rate of 15.6% during the course of 2021, from 12,695 in December 2020 to 14,679 in December 2021. The number of private funds continued to show strong growth in the first quarter of 2022, with an additional 305 private funds being registered in the first quarter of 2022.

As a leading domicile for alternative investment funds, the Cayman Islands combines a robust legal and regulatory regime with a pragmatic commercial approach to business.

7.2 What reforms (if any) in the Alternative Investment Funds space are proposed?

As highlighted in question 5.1, the Cayman Islands Government is working on a legislative framework for the implementation of ESG factors criteria for investment funds. There are also a number of commercial enhancements anticipated for exempted limited partnerships that are expected to be relevant to private funds, with similar enhancements to follow for exempted companies relevant to mutual funds.

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