

# International **Comparative** Legal Guides



## Alternative Investment Funds **2020**

A practical cross-border insight into alternative investment funds work

**Eighth Edition**

### Featuring contributions from:

Anderson Mori & Tomotsune

Bär & Karrer Ltd.

Bonn & Schmitt

Brodies LLP

Cadwalader, Wickersham & Taft LLP

Cases & Lacambra

Collas Crill LLP

Dechert LLP

Deloitte Legal

Dillon Eustace

Flick Gocke Schaumburg

IC Universal Legal

Maples Group

McCarthy Tétrault LLP

Mori Hamada & Matsumoto

Travers Smith LLP

VdA

Vivien Teu & Co LLP

Walkers (Bermuda) Limited

**ICLG.com**

## Expert Chapters

- 1** **The Rise of ESG Investing**  
Mikhaelle Schiappacasse, Dechert LLP
- 8** **The Global Subscription Credit Facility and Fund Finance Markets – Key Trends and Forecasts**  
Wesley A. Misson & Joseph P. Zeidner, Cadwalader, Wickersham & Taft LLP
- 12** **Bringing Foreign Investment Funds into Japan**  
Yasuzo Takeno & Fumiharu Hiromoto, Mori Hamada & Matsumoto
- 17** **Private Fund Management Issues Arising From COVID-19**  
Sam Kay, Travers Smith LLP

## Q&A Chapters

- 22** **Andorra**  
Cases & Lacabra: Miguel Cases Nabau & Laura Nieto
- 29** **Angola**  
VdA: Pedro Simões Coelho, Ricardo Seabra Moura, Carlos Couto & Inês Moreira dos Santos
- 36** **Bermuda**  
Walkers (Bermuda) Limited: Sarah Demerling & Melanie Fullerton
- 45** **Canada**  
McCarthy Tétrault LLP: Sean D. Sadler, Nigel P.J. Johnston & Cristian O. Blidariu
- 54** **Cayman Islands**  
Maples Group: Grant Dixon & Andrew Keast
- 62** **England & Wales**  
Travers Smith LLP: Jeremy Elmore & Emily Clark
- 74** **Germany**  
Flick Gocke Schaumburg: Christian Schatz
- 80** **Hong Kong**  
Vivien Teu & Co LLP: Vivien Teu & Sarah He
- 92** **India**  
IC Universal Legal: Tejesh Chitlangi & Sushreet Pattanayak
- 101** **Ireland**  
Dillon Eustace: Brian Kelliher & Richard Lacken
- 113** **Japan**  
Anderson Mori & Tomotsune: Koichi Miyamoto & Takahiko Yamada
- 122** **Jersey**  
Collas Crill LLP: Dilmun Leach & David Walters
- 128** **Luxembourg**  
Bonn & Schmitt: Amélie Thévenart
- 136** **Mexico**  
Deloitte Legal: Martín Cortina Camargo, Ramón Bravo Herrera, Héctor Alejandro Cuevas González & Eduardo Michán Escobar
- 143** **Mozambique**  
VdA: Pedro Simões Coelho, Ricardo Seabra Moura, Carlos Couto & Inês Moreira dos Santos
- 150** **Portugal**  
VdA: Pedro Simões Coelho, Ricardo Seabra Moura, Carlos Couto & Inês Moreira dos Santos
- 161** **Scotland**  
Brodies LLP: Andrew Akintewe
- 170** **Spain**  
Cases & Lacabra: Miguel Cases Nabau & Toni Barios Asensio
- 179** **Switzerland**  
Bär & Karrer Ltd.: Rashid Bahar & Martin Peyer
- 189** **USA**  
Dechert LLP: Karen L. Anderberg & Adrienne M. Baker

# Cayman Islands



Grant Dixon



Andrew Keast

Maples Group

## 1 Regulatory Framework

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

The Mutual Funds Law (2020 Revision) (the “**MF Law**”) provides for the regulation of open-ended investment funds and mutual fund administrators. Responsibility for regulation under the MF Law rests with the Cayman Islands Monetary Authority (“**CIMA**”).

The Private Funds Law, 2020 (the “**PF Law**”) provides for the regulation of closed-ended investment funds. Responsibility for regulation under the MF Law rests with CIMA.

In addition, the Retail Mutual Funds (Japan) Regulations (2018 Revision) (the “**Japan Regulations**”) provide a regulatory regime for retail mutual funds that are marketed to the public in Japan.

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?

A manager or adviser which is established in or, in the case of a foreign company, registered in the Cayman Islands and which conducts “securities investment business”, whether or not that securities investment business is carried on in the Cayman Islands, will fall within the scope of the Securities Investment Business Law (“**SIBL**”).

“Securities investment business” is defined as being engaged in the course of business in any one or more of the activities set out in Schedule 2 to SIBL. 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 SIBL specifically excludes certain activities from the definition of securities investment business, although those exclusions are unlikely to apply to a person conducting discretionary investment management or investment advisory activities.

Any person within the scope of SIBL conducting securities investment business must be licensed by CIMA, unless that person is registered as a “Registered Person” under the SIBL Law. A licence may be restricted (meaning that securities investment business 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 securities investment business may be exempt from the requirement to obtain a licence but will still be required to be registered as a “Registered Person” under the SIBL. 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 securities investment business and annually thereafter, confirming that they are entitled to rely on the relevant exemption.

An “Excluded Person” includes:

- (a) a company carrying on securities investment business exclusively for one or more companies within the same group;
- (b) a person, whose registered office in the Cayman Islands is provided by a licensee under the law, carrying on securities investment business exclusively for one or more of the following classes of person:
  - (i) a sophisticated person (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); or
  - (ii) a high-net-worth person (an individual whose net worth is at least US\$1,000,000 or any person that has any assets of not less than US\$5,000,000); or

- (iii) a company, partnership or trust of which the shareholders, limited partners or unitholders are all sophisticated persons or high-net-worth persons; or
- (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 securities investment business 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 Law 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 Law;
2. an administered fund under section 4(1)(b) of the MF Law;
3. a registered fund under section 4(3) of the MF Law; and
4. a limited investor fund under section 4(4) of the MF Law.
  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 Law, 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 Law 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 Law 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 Law) 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 Law 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 Law 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 Law if it is a company, unit trust or partnership whose principal business is the offering and issuing of its 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 spreading investment risks and 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, for reward based on the assets, profits or gains of the company, unit trust or partnership, but does not include:
  - (i) a person licensed under the *Banks and Trust Companies Law (2020 Revision)* or the *Insurance Law 2010*;
  - (ii) a person registered under the *Building Societies Law (2020 Revision)* or the *Friendly Societies Law (1998 Revision)*; 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 Law and closed-ended funds are governed by the PF Law. 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 and how long does the process typically take?

CIMA has established an online e-business portal, CIMACONnect, 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 short-form term sheet may be submitted;

- (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 (i) in the case of a master fund which has a registration fee of currently US\$3,049 initially and annually, and (ii) in the case of a private fund or limited investor fund that is registered by 7 August 2020, where the initial registration fee is waived);
- (e) for section 4(3) mutual funds only, an affidavit 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 and applications must be completed prior to a fund launching in order to be compliant with the MF Law or PF Law (as applicable).

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

#### 1.6 Are there local residence or other local qualification or substance requirements?

Each Cayman Islands regulated mutual fund and private fund must appoint a local auditor approved by CIMA.

The Directors Registration and Licensing Law, 2014 (the "DRLL") requires that the directors (both natural persons and corporate directors) of a corporate mutual fund or private fund regulated by CIMA or a certain type of "Registered Person" registered with CIMA under SIBL 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 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 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 April 2020 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 below.

## 2 Fund Structures

### 2.1 What are the principal legal structures used for Alternative Investment Funds?

Three types of vehicle are most commonly utilised by Cayman Islands investment funds: 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 in such capacity.

Exempted companies are by far the most common vehicle for open-ended funds (including master funds).

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 Law (2018 Revision) (the "ELP Law") is based substantially on the Delaware equivalent (although a Cayman Islands partnership is not a separate legal person). Whilst 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 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 Law (2020 Revision).

Limited partners ("LPs") of an ELP shall not be liable for the debts or obligations of the ELP under the ELP Law, (a) save as provided by the terms of the applicable partnership agreement, and (b) subject to the provisions of the ELP Law (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.

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

The principal structures are exempted companies and LLCs.

### 2.4 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 thereon will be governed by the governing documents.

### 2.5 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 Law 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.

### 2.6 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).

## 3 Marketing

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

The MF Law 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.

To supplement this requirement, CIMA has issued a rule in relation to the content of offering documents for licensed funds, which is generally applied to the offering documents of all regulated funds. 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?

The minimum disclosure requirements for offering documents for regulated mutual funds generally include the following:

- (a) details of the 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.

A private fund's offer document or term sheet (required for registration under the PF Law) should contain, as a minimum, the name of the fund, the name of the general partner (if the fund is an ELP), the biographies of the principals of the operators of the fund, the name of the manager, the minimum subscription, the applicable audit principles, the financial year end, the term, the investment strategy, the name of 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 or a short-form term sheet for registration under the PF Law. 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 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 Law or the PF Law, 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?**

Yes, in respect of section 4(1)(a) or section 4(1)(b) funds. 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).

## 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?**

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 Law 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.

**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?**

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 SIBL is required to make an annual filing confirming its status with CIMA but does not otherwise have any reporting requirements.

#### 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 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. 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 2.3?

Please see question 6.1 above.

#### 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 above.

#### 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?

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 80 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, amongst 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”, and (v) report information on such Reportable Accounts to 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 are being taken to implement the OECD’s Action Plan on Base Erosion and Profit-Shifting (BEPS), in particular Actions 2 (hybrids) (for example ATAD I and II), 6 (prevention of treaty abuse) (for example, the MLI), and 7 (permanent establishments), insofar as they affect Alternative Investment Funds’ 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, 2017 (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 will not be claiming access itself to a tax treaty, Action 6 is not directly relevant to it. However, a Cayman Islands fund 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 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) Law, 2018 and The International Tax Co-operation (Economic Substance) (Prescribed Date) Regulations, 2018 (together, the “**Initial Law**”). The Initial Law was amended on 22 February 2019 by the publication of The International Tax Co-operation (Economic Substance) (Amendment of Schedule) Regulations, 2019 (the “**Regulations**” and, together with the Initial Law, the “**Economic Substance Law**”) and supplemented by the issuance of the related Guidance on Economic Substance for Geographically Mobile Activities (the “**Guidance**”).

The Economic Substance Law 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 2019.

The definition of “relevant entity” is set out in the Regulations. 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 Law.

The definition of “investment fund” includes an “entity through which an investment fund directly or indirectly invests or operates”.

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

Not applicable – please see question 6.1 above.

#### 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 Reforms

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

The Cayman Islands continuously keeps its laws under review to ensure that the jurisdiction remains the leading domicile for alternative investment funds and remains responsive to stakeholders’ needs.



**Grant Dixon** is a partner in the Funds & Investment Management team at Maples and Calder, the Maples Group's law firm. He advises a global client base and specialises in a broad range of fund products, focusing primarily on venture capital, private equity and hedge funds. He also has extensive experience in general corporate, financing and commercial matters.

**Maples Group**

Ugland House, South Church Street  
PO Box 309  
Grand Cayman KY1-1104  
Cayman Islands

Tel: +1 345 814 5507  
Email: [grant.dixon@maples.com](mailto:grant.dixon@maples.com)  
URL: [www.maples.com](http://www.maples.com)



**Andrew Keast** is a partner in the Funds & Investment at Maples and Calder, the Maples Group's law firm. He works with a broad range of prominent institutional and start-up private equity, venture capital and hedge fund clients. He advises on all aspects of investment fund work, as well as general corporate and commercial matters. Andrew also advises a number of the leading sponsors and onshore counsel in the Israeli venture capital space.

**Maples Group**

Ugland House, South Church Street  
PO Box 309  
Grand Cayman KY1-1104  
Cayman Islands

Tel: +1 345 814 5371  
Email: [andrew.keast@maples.com](mailto:andrew.keast@maples.com)  
URL: [www.maples.com](http://www.maples.com)

The Maples Group, through its leading international law firm, Maples and Calder, advises global financial, institutional, business and private clients on the laws of the British Virgin Islands, the Cayman Islands, Ireland, Jersey and Luxembourg. With offices in key jurisdictions around the world, the Maples Group has specific strengths in 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. For more information, please visit: [maples.com/services/legal-services](http://maples.com/services/legal-services).

[www.maples.com](http://www.maples.com)



# ICLG.com

## Other titles in the ICLG series

Anti-Money Laundering  
Aviation Finance & Leasing  
Aviation Law  
Business Crime  
Cartels & Leniency  
Class & Group Actions  
Competition Litigation  
Construction & Engineering Law  
Consumer Protection  
Copyright  
Corporate Governance  
Corporate Immigration  
Corporate Investigations  
Corporate Tax  
Cybersecurity  
Data Protection  
Derivatives  
Designs  
Digital Business

Digital Health  
Drug & Medical Device Litigation  
Employment & Labour Law  
Enforcement of Foreign Judgments  
Environmental & Climate Change Law  
Environmental, Social & Governance Law  
Family Law  
Fintech  
Foreign Direct Investment Regimes  
Franchise  
Gambling  
Insurance & Reinsurance  
International Arbitration  
Investor-State Arbitration  
Lending & Secured Finance  
Litigation & Dispute Resolution  
Merger Control  
Mergers & Acquisitions  
Mining Law

Oil & Gas Regulation  
Outsourcing  
Patents  
Pharmaceutical Advertising  
Private Client  
Private Equity  
Product Liability  
Project Finance  
Public Investment Funds  
Public Procurement  
Real Estate  
Renewable Energy  
Restructuring & Insolvency  
Sanctions  
Securitisation  
Shipping Law  
Telecoms, Media & Internet  
Trade Marks  
Vertical Agreements and Dominant Firms