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Investment Funds 2024

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Cayman Islands: Law and Practice

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CAYMAN ISLANDS



Law and Practice

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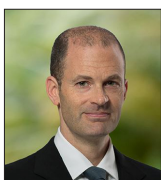
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in the areas of corporate commercial, finance, investment funds, litigation and trusts. Maintaining relationships with leading legal counsel, Maples Group leverages this local expertise to deliver an integrated service offering for global business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

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1. Market Overview

1.1 State of the Market

The Cayman Islands is a popular domicile for globally managed private equity, hedge and hybrid funds due to its tax neutral status, its flexible structuring options and its established and experienced financial services sector and professional service providers. Additionally, the Cayman Islands is recognised as an attractive jurisdiction for investment funds due to its English-based legal system, established judiciary and absence of political or sovereign concerns.

In particular, the Cayman Islands is the jurisdiction of choice for US sponsors structuring funds for US tax-exempt investors and non-US investors. Cayman Islands trusts and other vehicles are frequently used as investment vehicles for investors in Asia, including China and Japan.

The majority of investment funds established in the Cayman Islands are private non-retail funds.

2. Alternative Investment Funds

2.1 Fund Formation

2.1.1 Fund Structures

Entity options available for structuring investment funds include exempted limited partnerships, exempted companies, limited liability companies and trusts. Private equity funds are typically structured as exempted limited partnerships, and hedge funds make use of both exempted company and exempted limited partnership vehicles in standalone and master-feeder structures. Cayman Islands trusts and other vehicles are frequently used as investment vehicles for investors in Asia, including China and Japan. The limited liability company is becoming the vehicle of choice for general partner and/or management vehicles.

A key difference between an exempted limited partnership and an exempted company is that, notwithstanding registration, an exempted limited partnership is not a separate legal person distinct from its partners. An exempted limited partnership must act through its general partner, and all agreements and contracts must be entered into by or on behalf of the general partner (or any agent or delegate of the general

partner) under general legal principles of agency on behalf of the exempted limited partnership. Any right or property of the exempted limited partnership that is conveyed to or vested in or held either on behalf of the general partner or in the name of the exempted limited partnership is an asset of the exempted limited partnership held upon trust in accordance with the terms of the relevant law.

2.1.2 Common Process for Setting Up Investment Funds

The formation and registration processes in the Cayman Islands are streamlined and efficient. Exempted companies are formed upon the filing of a declaration and the memorandum and articles of association with the Registrar. Exempted limited partnerships and limited liability companies are formed upon the execution of the relevant operating agreement and the filing of a registration statement with the Registrar.

With limited exceptions, all open-ended funds must register with the Cayman Islands Monetary Authority (CIMA) under the Mutual Funds Act (As Revised), and all closed-ended funds must register with CIMA under the Private Funds Act (As Revised).

To register an open-ended fund, the requisite application form and offering memorandum must be submitted to CIMA in advance of the fund launch and directors must be registered under the Director Registration and Licensing Act. The administrator and auditor of the fund must submit consent letters confirming responsibility for these important roles.

To register a closed-ended fund, the requisite application form and offering memorandum (or summary of terms) must be submitted to CIMA within 21 days of a fund accepting capital com-

mitments or, if earlier, prior to the fund receiving any capital contributions for the purpose of investments. The administrator and auditor of the fund must submit consent letters confirming responsibility for these important roles.

2.1.3 Limited Liability

The Cayman Islands legal system is based on well-recognised legal concepts founded in English law, including limited liability and separate corporate personality, which underpin the corporate, partnership and trust vehicles used as collective investment schemes, all of which have been tried and tested and found to be robust during the global financial crisis.

As a general rule, in the absence of a contractual arrangement to the contrary, the liability of a shareholder of a Cayman Islands company that has been incorporated with limited liability and with a share capital is limited to the amount from time to time unpaid in respect of the shares it holds. A Cayman Islands company has a legal personality separate from that of its shareholders, and is separately liable for its own debts due to third parties.

A Cayman Islands exempted limited partnership does not have a legal personality separate from its partners. General partners have unlimited liability for all the debts and obligations of such partnerships by virtue of the Cayman Islands Exempted Limited Partnership Act (As Revised). Fund investors typically subscribe for limited partnership interests on which their liability is generally limited to their contributed capital and outstanding capital commitment (if any).

However, there are limited circumstances under Cayman Islands law whereby an investor who takes part in the conduct of the business of the partnership and holds itself out as a general

partner to third parties may assume unlimited liability for the debts and obligations of the partnership. Exempted limited partnerships are the most common type of Cayman Islands vehicle used in private equity fundraising, and investors in such funds commonly seek Cayman Islands legal opinions in respect of the limited liability nature of their partnership interest, amongst other things.

2.1.4 Disclosure Requirements

Every mutual fund registered with CIMA (unless that fund is a “master fund” as defined under the Mutual Funds Act or a “Limited Investor Fund” – see 2.3.1 Regulatory Regime) is required to issue an offering document that 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 as to whether or not to invest in the fund. CIMA has issued rules regarding the content of offering documents for registered mutual funds and rules regarding the content of marketing materials for registered private funds.

All fund offering documents are subject to the pre-existing statutory obligations with regard to misrepresentation and the general common law duties with regard to the proper disclosure of all material matters.

2.2 Fund Investment

2.2.1 Types of Investors in Alternative Funds

The Cayman Islands is a popular domicile for globally managed private equity, hedge and hybrid funds due to its tax neutral status, its flexible structuring options and its established and experienced financial services sector and professional service providers. In particular, the Cayman Islands is the jurisdiction of choice for US sponsors structuring funds for US tax-exempt investors and non-US investors. Cayman Islands

trusts and other vehicles are frequently used as investment vehicles for investors in Asia, including China and Japan.

2.2.2 Legal Structures Used by Fund Managers

Private equity funds are typically structured as exempted limited partnerships. Hedge funds are typically structured as exempted companies and/or exempted limited partnerships. Cayman Islands trusts and other vehicles are frequently used as investment vehicles for investors in Asia, including China and Japan.

2.2.3 Restrictions on Investors

Unless a mutual fund is “licensed”, “administered”, a “Limited Investor Fund” or was registered with CIMA prior to 14 November 2006, all investors investing into a fund regulated by CIMA under the Mutual Funds Act are subject to an initial minimum investment amount of KYD80,000 (or its equivalent in another currency).

2.3 Regulatory Environment

2.3.1 Regulatory Regime

Investment funds that fall within the definition of either a “mutual fund” under the Mutual Funds Act or a “private fund” under the Private Funds Act are required to be regulated by CIMA.

A mutual fund is any company, unit trust or partnership (established or registered in the Cayman Islands) that issues equity interests that are redeemable 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 investments. Mutual funds that issue debt are excluded from regulation, even if the bonds or notes are convertible or have warrants attached.

There are four types of regulated mutual funds.

- The “Licensed Mutual Fund” – a fund may obtain a licence from CIMA if CIMA considers that each promoter is of sound reputation, that the administration of the fund will be undertaken by persons who have sufficient expertise and are fit and proper to be directors (or, as the case may be, managers or officers in their respective positions), and that the business of the fund will be carried out in a proper way. The licensing process can take a few months and a fund must not commence operations until the licence has been granted. No regulatory minimum initial investment amount applies to this type of fund.
- The “Administered Mutual Fund” – these funds are required to designate a principal office in the Cayman Islands at the office of a licensed mutual fund administrator (MFA). Instead of CIMA doing so, it is the MFA that is required to be satisfied that the promoter is of sound reputation, that the administration of the fund will be undertaken by persons who have sufficient expertise to administer the fund and are of sound reputation, and that the business of the mutual fund and the offer of equity interests will be carried out in a proper way. No regulatory minimum initial investment amount applies to this type of fund.
- The “Registered Mutual Fund” – this type of fund is not subject to licensing nor is it required to have a principal office provided by an MFA. However, it must have either (i) a minimum initial investment amount of at least KYD80,000 (or its equivalent in another currency) per investor, thus making it suitable only for sophisticated investors, or (ii) its equity interests listed on a recognised stock exchange, making it therefore subject to additional regulation by such stock exchange.

- The “Limited Investor Fund” – this type of fund must have no more than 15 investors, who must be capable of appointing and removing the operator(s). Prior to the admission of a sixteenth investor, a Limited Investor Fund will be required to re-register with CIMA under one of the other heads of regulation described above. Unlike a Registered Mutual Fund, a Limited Investor Fund is not subject to any minimum initial investment amount.

A “master fund” is defined under the Mutual Funds Act as a company, partnership or unit trust (established or registered in the Cayman Islands) that issues equity interests that are redeemable at the option of the holder to one or more investors, one of which must be another fund regulated by CIMA that conducts more than 51% of its investing in the “master fund” directly or indirectly (a “regulated feeder fund”). The “master fund” must hold investments or conduct trading activities for the principal purpose of implementing the overall investment strategy of the regulated feeder fund. Each fund that falls within the definition of a “master fund” is required to register as a “master fund” under the Registered Mutual Fund category and is subject to the same minimum initial investment amount as a Registered Mutual Fund.

All mutual funds regulated by CIMA (other than “master funds”) are required to file offering documents or a summary of terms upon registration, and must notify CIMA within 21 days of any material changes to service providers or the terms of the offering. In addition, all CIMA-regulated mutual funds must file audited accounts and a fund annual return within six months of their financial year-end.

A private fund is any company, unit trust or partnership (wherever established) that offers

or issues or has issued investment interests, 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:

- the holders of investment interests do not have day-to-day control over the acquisition, holding, management or disposal of the investments; and
- the investments are managed as a whole by or on behalf of the operator of the private fund, directly or indirectly, but this does not include certain licensed or registered persons or any non-fund arrangements.

CIMA has wide-ranging powers in respect of Cayman Islands entities that are regulated as mutual funds or private funds in the jurisdiction. CIMA has worked alongside overseas regulators in regulatory investigations involving investment funds, including the US Securities and Exchange Commission and the UK's Financial Conduct Authority.

There is no requirement for the investment manager or manager of a fund to be domiciled in the Cayman Islands or for a non-Cayman Islands manager or investment manager to be regulated in the Cayman Islands. Most fund managers are not domiciled in the Cayman Islands.

The Cayman Islands continues to adopt and embrace international best practice approaches for anti-money laundering (AML) and combating terrorist financing. The AML regime covers a wider range of investment entities, including all types of investment funds (whether regulated or not) in the Cayman Islands. All investment entities are required to appoint experienced risk and compliance professionals with specific knowl-

edge of the Cayman Islands AML regime to the roles of anti-money laundering compliance officer (AMLCO), money laundering reporting officer (MLRO) and deputy MLRO. The AMLCO, in particular, will assist the investment entity in ensuring compliance with relevant requirements and, where the investment entity looks to rely upon a third party for carrying out AML/KYC checks on investors, the AMLCO will likely take a lead role in assessing the suitability of that third party. It is clear that CIMA expects the operators of investment entities, together with their AMLCO, to carry out a risk-based due diligence exercise when assessing the suitability of a service provider and that this exercise should be tailored to the risk profile of each investment entity (taking into account its investor base and its anticipated investment activities). This continues to be a rapidly evolving area and the importance of retaining specialist risk and compliance professionals continues to rise.

The increasing compliance burden – not just in the Cayman Islands, but globally – has led to a sharp increase in outsourced administration among closed-ended investment entities. Outsourced service providers are increasingly acting as a “one-stop shop” for compliance solutions where expertise and scalable data can result in marked increases in compliance efficiency.

2.3.2 Requirements for Non-local Service Providers

There is generally no requirement for non-local service providers to be regulated in the Cayman Islands. However, all directors of companies regulated by CIMA as mutual funds under the Mutual Funds Act must be registered with, or licensed by, CIMA pursuant to the Directors Registration and Licensing Act.

2.3.3 Local Regulatory Requirements for Non-local Managers

There is generally no restriction on a fund manager from another jurisdiction managing a fund established as a Cayman Islands vehicle. However, if an overseas manager establishes a Cayman entity to act as the investment manager for a fund, such manager vehicle may be subject to licensing or registration with CIMA under the Cayman Islands Securities Investment Business Act (As Revised). Such Cayman Islands entities acting as a discretionary manager of an investment fund may also be subject to local substance requirements under the Cayman Islands International Tax Co-operation (Economic Substance) Act (As Revised).

2.3.4 Regulatory Approval Process

Licensed Mutual Funds must apply to CIMA for a licence to operate. The licensing process can take a few months and a fund must not commence operations until the licence has been granted.

Administered Mutual Funds, Registered Mutual Funds and Limited Investor Funds must make an online filing with CIMA in the prescribed form and submit an offering document (or summary of terms), service provider consent letters and an application fee before the launch date.

Private funds must make an online filing with CIMA in the prescribed form and submit an offering document (or summary of terms), service provider consent letters and an application fee within 21 days of accepting capital commitments or, if earlier, prior to the fund receiving any capital contributions for the purpose of investments.

2.3.5 Rules Concerning Pre-marketing of Alternative Funds

See 2.3.6 Rules Concerning Marketing of Alternative Funds.

2.3.6 Rules Concerning Marketing of Alternative Funds

The marketing of investment funds in the Cayman Islands does not require specific regulatory approval.

2.3.7 Marketing of Alternative Funds

Investment funds are typically established as either Cayman Islands exempted companies, exempted limited partnerships, limited liability companies or trusts. An exempted company that is not listed on the Cayman Islands Stock Exchange is prohibited from making any invitation to the public in the Cayman Islands to subscribe for any of its securities. Exempted limited partnerships and limited liability companies are prohibited from undertaking business with the public in the Cayman Islands other than so far as may be necessary for the carrying on of their business exterior to the Cayman Islands. If a trust is registered as an “exempted trust”, investors must not – and must not be likely to – include any person who is resident or domiciled in the Cayman Islands (other than exempted and ordinary non-resident Cayman Islands companies or the object of a charitable trust or power).

The “public in the Cayman Islands” does not include:

- any exempted or ordinary non-resident company registered under the Cayman Islands Companies Act;
- a foreign company registered pursuant to Part IX of the Companies Act;

- a foreign limited partnership registered under Section 42 of the Cayman Islands Exempted Limited Partnership Act;
- any company acting as general partner of a partnership registered under the Exempted Limited Partnership Act; or
- any director or officer of the same acting in such capacity, or the trustee of any trust registered or capable of registration as an exempted trust under the Cayman Islands Trusts Act acting in such capacity.

2.3.8 Marketing Authorisation/Notification Process

See 2.3.6 Rules Concerning Marketing of Alternative Funds.

2.3.9 Post-marketing Ongoing Requirements

See 2.3.6 Rules Concerning Marketing of Alternative Funds.

2.3.10 Investor Protection Rules

There are no investor protection rules that restrict the ownership of fund interests to certain classes of investors, except that a Registered Mutual Fund must have a minimum initial investment amount of KYD80,000 (or its equivalent in another currency). Such a fund is geared toward more sophisticated investors and is subject to lighter-touch regulation by CIMA. A mutual fund that has a minimum initial investment amount of less than KYD80,000 (other than a Limited Investor Fund) is subject to increased regulation by having to obtain a licence or having a “principal office” provided by a CIMA-licensed mutual fund administrator.

2.3.11 Approach of the Regulator

CIMA is a well-respected and dynamic regulator that consistently evolves its practice and approach to reflect the changing regulatory environment. CIMA has well-established consulta-

tion processes that are mandated by statute and allow for co-ordinated feedback from industry. CIMA has historically adopted a light-touch approach to enforcement, looking to assist in remedying breaches and minimising the chances of future errors rather than penalising regulatory oversights. However, there are signs that this approach is shifting, largely in response to external assessments, and the use of active enforcement to drive compliance is anticipated, particularly in the light of new powers granted to CIMA to impose administrative fines for regulatory breaches without recourse to the judicial system.

2.4 Operational Requirements

Legislation imposes no restrictions on the types of activity that may be undertaken by a Cayman Islands investment fund or the types of investments it may make. However, there are certain operational requirements imposed on mutual funds and private funds regulated by CIMA.

Mutual Funds

A regulated mutual fund needs to comply with the Net Asset Value (NAV) Calculation Rules and the Segregation Rules. The NAV Calculation Rules require a mutual fund to establish, implement and maintain pricing and valuation practices, policies and procedures (a NAV Calculation Policy) that ensure the fund’s NAV is fair, complete, neutral, free from material error and verifiable.

The NAV of a mutual fund must be calculated by a service provider that is independent of the fund’s investment manager/adviser and operators, and who is competent, has the capability to value the Portfolio of the fund and is able to adhere to the NAV Calculation Policy. A mutual fund’s investment manager/adviser or operators may calculate or assist in the calculation of

the fund's NAV but only if this fact is explicitly detailed in the fund's offering document, together with an explanation as to why another service provider could not calculate the fund's NAV.

The Segregation Rules require a regulated mutual fund to appoint a service provider with regard to ensuring the safekeeping of the fund's portfolio. A mutual fund's portfolio must be segregated and accounted for separately from any assets of any service provider. A mutual fund must ensure that none of its service providers uses the portfolio to finance their own or any other operations in any way.

The operators of a mutual fund must establish, implement and maintain (or oversee the establishment, implementation and maintenance of) strategies, policies, controls and procedures to ensure compliance with the Segregation Rules, consistent with the fund's offering document and appropriate for the size, complexity and nature of the fund's activities and investors.

Private Funds

The Private Funds Act contains certain operational requirements for a registered private fund, including provisions relating to the valuation of assets, the safekeeping of fund assets, cash monitoring and the identification of securities.

A private fund is required to establish, implement and maintain appropriate and consistent pricing and valuation practices, policies and procedures in order to properly value such private fund's assets and to ensure that valuations are conducted in accordance with the Private Funds Act.

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.

A private fund is required to monitor the cash flows, to ensure that all cash has been booked in cash accounts opened in the name, or for the account, of the private fund and to ensure that all payments made by investors in respect of investment interests have been received.

A private fund that regularly trades securities, or holds them on a consistent basis, is required to maintain a record of the identification codes of the securities in question.

Corporate Governance

In April 2023, CIMA issued new Rules on Corporate Governance and Internal Controls (the "Rules") which require registered Cayman Islands investment funds to establish, implement and maintain a corporate governance framework and adequate and effective internal controls. The Rules came into effect on 14 October 2023 and they create new regulatory obligations for CIMA-registered funds. The new obligations should not impact current operating practices in a material manner. There is flexibility in how and when the arrangements are implemented. CIMA expressly recognises that each fund's corporate governance framework and internal controls should reflect its size, complexity, structure, nature of business and risk profile (by reference to, for example, assets under management, number of investors, complexity of the structure, nature of investment strategy, or nature of the operations). CIMA expressly contemplates that it is possible

for a fund to rely on arrangements in place with its investment manager and other service providers to ensure compliance with these regulatory obligations. There is also a requirement for the “operator” or “governing body” of the fund (being the board of directors where the fund is a company, the general partner where the fund is a partnership and the manager (or equivalent) where the fund is a limited liability company and, in each case, needing to be comprised of at least two suitable natural persons) to hold at least one meeting annually in order to, in summary, review and monitor the fund’s activities and strategy, any conflicts of interest, financial statements and the activities and functions of service providers.

2.5 Fund Finance

The Cayman Islands is a leading fund finance jurisdiction where both Cayman Islands and non-Cayman Islands security packages are respected and recognised. Financing counterparties recognise the Cayman Islands as a “creditor-friendly” jurisdiction and are very familiar with, and comfortable lending to, all forms of Cayman Islands funds vehicles. Both subscription line facilities secured on investors’ capital commitments and leveraged finance facilities secured by the relevant target group’s assets are very common and well-established products in the Cayman market.

There are no restrictions, issues or requirements imposed by Cayman Islands legislation, and Cayman Islands vehicles are able to access the full range of debt finance options seen in the market. Restrictions or requirements in relation to borrowing may, however, be contained in the constitutional and organisational documents of the Cayman Islands vehicle(s). These are discussed and negotiated by the sponsor and investors at launch, and/or with the finance

provider at the outset of a new borrowing transaction, in the usual way.

Cayman Islands vehicles may be subject to – and grant a wide range of – security packages that will vary depending on the deal type, other jurisdictions involved, and normal deal considerations and requirements. Cayman Islands vehicles are able to enter into both Cayman Islands and non-Cayman Islands security packages and documentation. All such arrangements will typically be recognised by the Cayman Islands courts, provided they are valid and enforceable under the laws of the relevant non-Cayman Islands legal system(s). As noted above, subscription line facilities secured on investors’ capital commitments are particularly prevalent.

There are no significant issues in relation to fund finance transactions from a Cayman Islands legal perspective. As with any jurisdiction or deal, transaction participants should pay close attention to constitutional and organisational documents at the outset to ensure they are in a suitable form for the type of borrowing transaction and security package contemplated.

2.6 Tax Regime

The Cayman Islands tax system is predominantly based on indirect taxes, with government revenues being derived from the imposition of fees on the financial services industry, customs duties, work permit fees and tourist accommodation charges. Under existing legislation, the government of the Cayman Islands does not impose any form of direct tax on profits, income, gains or appreciations, nor by way of withholding in whole or in part on the payment of dividends or other distributions of income or capital by investment funds established in the Cayman Islands.

The Cayman Islands is not party to any double tax treaties with any country that are applicable to any payments made to or by investment funds established in the Cayman Islands.

The Cayman Islands entered into a Model 1B (ie, non-reciprocal) inter-governmental agreement to improve international tax compliance and the automatic exchange of information with the USA on 29 November 2013 (the Cayman/US IGA). A Cayman Islands financial institution shall be treated as complying with, and not subject to withholding under, Section 1471 of the US Code, so long as it complies with its obligations under the Cayman/US IGA and those contained in the Cayman Islands implementing legislation.

The Cayman Islands became a signatory to the Multilateral Competent Authority Agreement to implement the OECD Standard for Automatic Exchange of Financial Account Information – Common Reporting Standard (CRS) with effect from January 2016.

Cayman Islands regulations have been issued to give effect to the Cayman/US IGA and CRS (collectively, the AEOI Regulations). Pursuant to the AEOI Regulations, the Cayman Islands Tax Information Authority has also published guidance notes on the application of the Cayman/US IGA and CRS to financial institutions structured in the Cayman Islands.

All Cayman Islands financial institutions are required to comply with the registration, due diligence and reporting requirements of the AEOI Regulations.

From an investor's perspective, while the Cayman Islands adds no additional tax layer to the structuring of their global financial transactions, investee entities as well as investors are still sub-

ject to their home jurisdictions' relevant taxes and are responsible for complying with such obligations. As noted above, the Cayman Islands has adopted globally accepted standards for transparency and cross-border co-operation with foreign tax authorities and law enforcement agencies, and automatically exchanges information with more than 100 worldwide revenue authorities annually, pursuant to the Cayman/US IGA and CRS (among other annual automatic exchange of information regimes).

3. Retail Funds

3.1 Fund Formation

3.1.1 Fund Structures

The majority of investment funds established in the Cayman Islands are private non-retail funds. Indeed, a Cayman Islands company that is not listed on the Cayman Islands Stock Exchange is prohibited from making any invitation to the public in the Cayman Islands to subscribe for any of its securities, and exempted limited partnerships are prohibited from undertaking business with the "public in the Cayman Islands" other than so far as may be necessary for the carrying on of the business of the partnership exterior to the Cayman Islands.

For these purposes, "public in the Cayman Islands" does not include the following:

- any exempted or ordinary non-resident company registered under the Cayman Islands Companies Act (As Revised);
- a foreign company registered pursuant to Part IX of the Companies Act;
- a foreign limited partnership registered under Section 42 of the Cayman Islands Exempted Limited Partnership Act (As Revised);

- any company acting as general partner of a partnership registered under the Exempted Limited Partnership Act; or
- any director or officer of the same acting in such capacity or the trustee of any trust registered or capable of registration as an exempted trust under the Cayman Islands Trusts Act (As Revised) acting in such capacity.

Investors in an exempted trust registered under Part VI of the Trusts Act must not and must not be likely to include any person who is resident or domiciled in the Cayman Islands (other than exempted and ordinary non-resident Cayman Islands companies or the object of a charitable trust or power).

Subject to the above restrictions, certain categories of regulated open-ended mutual funds may be established without a statutory minimum investment requirement and therefore could be established as retail funds, although they are not common in the Cayman Islands.

There are four types of regulated open-ended “mutual funds” under the Mutual Funds Act.

- The “Licensed Mutual Fund” – a fund may obtain a licence from CIMA if CIMA considers that each promoter of the fund is of sound reputation, that the administration of the fund will be undertaken by persons who have sufficient expertise and are fit and proper to be directors (or, as the case may be, managers or officers in their respective positions), and that the business of the fund will be carried out in a proper way. Funds that have obtained a licence from CIMA are not subject to a minimum initial investment amount.
- The “Administered Mutual Fund” – this type of fund is not subject to a minimum initial investment; however, instead of going

through the licensing process, the fund is required to designate a “principal office” in the Cayman Islands at the office of a CIMA-licensed mutual fund administrator.

- The “Registered Mutual Fund” – this type of fund must have either (i) a minimum initial investment amount of KYD80,000 (or its equivalent in another currency), which will thus render it not suitable as a retail fund, or (ii) its equity interests listed on a recognised stock exchange. Any mutual fund that falls within the definition of a “master fund” under the Mutual Funds Act must register as a “master fund” under the Registered Mutual Fund category.
- The “Limited Investor Fund” – this type of fund must have no more than 15 investors, who must be capable of appointing and removing the operator(s). Prior to the admission of a sixteenth investor, a Limited Investor Fund will be required to re-register with CIMA under one of the other heads of regulation described above. Unlike a Registered Mutual Fund, a Limited Investor Fund is not subject to any minimum initial investment amount.

3.1.2 Common Process for Setting Up Investment Funds

See 3.1.1 Fund Structures.

3.1.3 Limited Liability

See 3.1.1 Fund Structures.

3.1.4 Disclosure Requirements

See 3.1.1 Fund Structures.

3.2 Fund Investment

3.2.1 Types of Investors in Retail Funds

See 3.1.1 Fund Structures.

3.2.2 Legal Structures Used by Fund Managers

See 3.1.1 Fund Structures.

3.2.3 Restrictions on Investors

See 3.1.1 Fund Structures.

3.3 Regulatory Environment

3.3.1 Regulatory Regime

See 3.1.1 Fund Structures.

3.3.2 Requirements for Non-local Service Providers

See 3.1.1 Fund Structures.

3.3.3 Local Regulatory Requirements for Non-local Managers

See 3.1.1 Fund Structures.

3.3.4 Regulatory Approval Process

See 3.1.1 Fund Structures.

3.3.5 Rules Concerning Pre-marketing of Retail Funds

See 3.1.1 Fund Structures.

3.3.6 Rules Concerning Marketing of Retail Funds

See 3.1.1 Fund Structures.

3.3.7 Marketing of Retail Funds

See 3.1.1 Fund Structures.

3.3.8 Marketing Authorisation/Notification Process

See 3.1.1 Fund Structures.

3.3.9 Post-marketing Ongoing Requirements

See 3.1.1 Fund Structures.

3.3.10 Investor Protection Rules

See 3.1.1 Fund Structures.

3.3.11 Approach of the Regulator

See 3.1.1 Fund Structures.

3.4 Operational Requirements

See 3.1.1 Fund Structures.

3.5 Fund Finance

See 3.1.1 Fund Structures.

3.6 Tax Regime

See 3.1.1 Fund Structures.

4. Legal, Regulatory or Tax Changes

4.1 Recent Developments and Proposals for Reform

In addition to offences for non-compliance set out in the Mutual Funds Act and the Private Funds Act, CIMA now also has the power to impose administrative fines for breaches of prescribed provisions of such Acts committed by entities and individuals.

Breaches of prescribed provisions are categorised as being “minor”, “serious” or “very serious”. There is a sliding scale of fines, as follows:

- a fixed fine of KYD5,000 for minor breaches;
- up to KYD50,000 for individuals or KYD100,000 for entities for serious breaches; and
- up to KYD100,000 for individuals or KYD1 million for entities for very serious breaches.

Upon determination of a breach, CIMA will provide a breach notice to the relevant party. There will be a 30-day opportunity to reply to the breach notice and to rectify a minor breach to the Authority’s satisfaction.

The introduction of the administrative fines regime reinforces the need for all operators of regulated investment funds to understand their obligations under the Acts and to ensure that they maintain appropriate systems and controls to meet these obligations, as failure to do so could now potentially result in the imposition of significant fines.

On 17 December 2018, the Cayman Islands enacted The International Tax Co-operation (Economic Substance) Act (As Revised) as part of its ongoing adherence to global standards as one of the 140 member countries committed to the OECD's Base Erosion and Profit Shifting ("BEPS") standards regarding geographically mobile activities. The Economic Substance Act introduced certain reporting and economic substance requirements for "relevant entities" conducting "relevant activities". Entities carrying on business as "investment funds" are generally not required to satisfy the economic substance test set forth in the legislation but must annually file an economic substance notification with the Cayman Islands Registrar confirming their status under the Economic Substance Act.

On 24 November 2023, the Parliament of the Cayman Islands passed the Beneficial Ownership Transparency Act, 2023 which was later gazetted on 15 December 2023 (BOTA). The

BOTA is expected to be brought into force in mid-2024. Once in force, the BOTA will implement a number of changes to the existing Cayman Islands beneficial ownership regime (BOR), including as follows:

- **Single act:** The BOTA consolidates various existing pieces of legislation relating to the BOR into a single Act (along with its accompanying Regulations and Guidance Notes).
- **New in-scope entities:** The current BOR applies only to companies, LLCs and LLPs. The BOTA brings additional types of entity into scope, including exempted limited partnerships.
- **Definition of beneficial owner:** The BOTA provides for an updated definition of "beneficial owner" (based on ownership and/or control).
- **Removal of exemptions:** The majority of the exemptions that apply under the current BOR will be removed or significantly restricted in favour of certain "alternative routes to compliance", meaning that the in-scope entity would not (where applicable) be required to report its beneficial owners, nor establish a beneficial ownership register, but rather report limited "required particulars". Mutual funds and private funds registered with the Cayman Islands Monetary Authority will be able to apply an "alternate route to compliance".

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