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Cayman Islands: Law & Practice

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Maples Group



CAYMAN ISLANDS



Law and Practice

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

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

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1. Legal System

1.1 Legal System and Judicial Order

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

Cayman Islands law is derived from several sources:

- primary legislation – ie, local statutes passed by the Legislative Assembly of the Cayman Islands or its predecessors, and approved by the Governor of the Cayman Islands; for example, the Companies Act (As Revised) of the Cayman Islands (the “Companies Act”) and the Private Funds Act (As Revised) of the Cayman Islands;
- secondary legislation – ie, legislation enacted pursuant to local statutes; examples include the Companies Winding-Up Rules (2023 Consolidation) and the Private Funds Regulations (As Revised) of the Cayman Islands;
- statutes passed by the United Kingdom (UK) Parliament that have been expressly extended to the Cayman Islands;

- Orders of His Majesty’s Privy Council that are applicable to the Cayman Islands; and
- any relevant remaining English and British Commonwealth common law and rules of equity established by settlement not having been replaced by local or UK statute.

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

2. Restrictions on Foreign Investments

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

Approval from the Cayman Islands authorities may be required if foreign investors are investing in a Cayman Islands company that conducts local business (ie, with businesses and individuals located in the Cayman Islands) (a “Local

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

Entities registered or incorporated in the Cayman Islands conducting business outside the jurisdiction

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

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

Property in the Cayman Islands

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

2.2 Procedure and Sanctions in the Event of Non-Compliance

Local Operating Business

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

Any Local Company with less than 60% local participation that does not hold an LCCA licence and is not otherwise exempted or licensed to operate in the Cayman Islands under another law, commits an offence and is liable (i) on summary conviction to a fine of KYD200 (USD243.90) and (ii) on conviction on indictment to a fine of

KYD1,000 (USD1,219.51), in each case, for each day the offence continues.

2.3 Commitments Required From Foreign Investors

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

2.4 Right to Appeal

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

The Appeals Tribunal's decision will be communicated to the appellant and the Board within 28 days of the hearing. A further appeal may be made to the Grand Court from a decision of the Appeals Tribunal on a point of law only.

3. Corporate Vehicles

3.1 Most Common Forms of Legal Entity

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

Exempted Companies

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

Ordinary Non-Resident and Ordinary Resident Companies

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

Ordinary non-resident companies cannot engage in any business activities within the Cayman Islands. Ordinary resident companies may conduct business in the Cayman Islands. Ordinary resident and non-resident companies must file a list of shareholders annually with the

Registrar of Companies. Ordinary resident companies must also file an annual list of shares held by Cayman Islands residents with the applicable Cayman Islands immigration board to comply with the LCCA requirement that 60% of shares of an ordinary resident company must have Cayman Islands ownership.

Overseas Companies

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

Segregated Portfolio Companies

A segregated portfolio company (SPC) is a form of exempted company incorporated under the Companies Act, which is permitted to create one or more segregated portfolios in order to segregate the assets and liabilities of the SPC held within or on behalf of a segregated portfolio from the assets and liabilities of the SPC held within or on behalf of any other segregated portfolio of the SPC. It may also segregate the assets and liabilities of the SPC which are not held within or on behalf of any segregated portfolio of the SPC (called the general assets of the SPC) from the relevant segregated portfolios of the SPC. The segregation of assets and liabilities within segregated portfolios does not create any new legal entity: the SPC is and remains a single legal entity and any segregated portfolio of, or within, an SPC does not constitute a legal entity separate from the SPC itself. This means, for

example, that the SPC for the account of one of its segregated portfolios cannot hold shares issued by the SPC in respect of another of its segregated portfolios. They are commonly used for mutual funds and other investment vehicles seeking to segregate assets and liabilities.

Limited Liability Companies

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

Exempted Limited Duration Companies

An exempted limited duration company (LDC) is a form of exempted company incorporated under the Companies Act. An LDC exists for a fixed period (not exceeding 30 years) specified in its memorandum of association and it must have at least two members. It is generally very uncommon to use an LDC; however, it could be used, for example, where a particular project or venture must be completed within a certain timeframe. Following the expiration of the fixed period, the LDC will be deemed to have automatically commenced voluntary winding up and will dissolve, with its assets being distributed accordingly.

Exempted Limited Partnerships

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

Limited Liability Partnerships

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

As there is no requirement for an LLP to undertake its business “with a view to profit”, an LLP may be a helpful structuring option for not-for-profit organisations and other social enterprises.

Foundation Companies and Companies Limited by Guarantee

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

A company limited by guarantee is a Cayman company (exempt or ordinary) that, instead of having shareholders, has members. Typically, the liability of members of a company limited by guarantee is limited under its constitution to USD1. A Cayman company limited by guarantee has many of the same features as a Cayman company limited. It is a body corporate with a legal personality distinct from that of its members, directors and officers. Accordingly, it has

capacity to sue and be sued and to hold property. Companies limited by guarantee are rarely incorporated for purely commercial purposes, rather they are more typically used for non-profit/club scenarios where there is no expectation of profits passing to the members.

Trusts (Including Unit Trusts)

In contrast to the vehicles described above, a trust does not have separate legal personality and so a trust itself cannot hold property in its own name. Rather, legal title to property held upon the terms of the trust is vested in the trustees of the trust and it is the trustees who enter into transactions in that capacity and who can sue and be sued. The primary legislation that sets out the framework for trusts in the Cayman Islands is the Trusts Act (2021 Revision) (the "Trusts Act"). The Trusts Act incorporates provisions that detail the conflict of laws rules affecting Cayman Islands trusts (the "Trusts (Foreign Element") Provisions"). These provisions are particularly relevant in instances where a Cayman Islands trust has been established by a settlor domiciled outside of the Cayman Islands in a jurisdiction that does not permit testamentary freedom.

Trusts can be established for various objectives, such as wealth management, estate planning, philanthropic endeavours (Charitable Trusts) and employee incentivisation schemes, much like foundation companies.

Cayman permits the establishment of non-charitable purposes trusts created pursuant to the Cayman Islands Special Trusts (Alternative Regime) Act 1997 (known as STAR Trusts), the purposes of which may be to benefit or carry out, as the case may be, a mixture of persons and purposes so long as they are lawful and not contrary to public policy.

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

3.2 Incorporation Process

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

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

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

Exempted Limited Partnerships

To register a Cayman Islands partnership as an ELP, the corporate services provider, on behalf of its general partner, must submit to the Registrar of Exempted Limited Partnerships in the Cayman Islands a statement setting out certain

prescribed information and pay the appropriate filing fees. A Certificate of Registration issued by the Registrar of ELP is conclusive evidence that the requirements of the ELP Act have been complied with in respect of the formation and registration of an exempted limited partnership.

Limited Liability Companies

To form and register an LLC, a registration statement must be submitted by the corporate services provider to the Registrar of Limited Liability Companies in the Cayman Islands which sets out basic information regarding the limited liability company and the appropriate filing fees. A Certificate of Registration issued by the Registrar of Limited Liability Companies is conclusive evidence that the requirements of the LLC Act have been complied with in respect of the formation and registration of an LLC.

Timing

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

3.3 Ongoing Reporting and Disclosure Obligations

General – Companies Act

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

Exempted companies must have a registered office in the Cayman Islands with a licensed and regulated corporate services provider and are

required to file certain documents and information with the Registrar of Companies.

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

- changes to the company name;
- increase or reduction in the authorised share capital;
- changes of directors and officers;
- changes in the registered office;
- amendments to the memorandum and articles of association of the company; and
- changes to the beneficial ownership register (if any) of the company.

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

Annual Requirements

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

Financial Statements

All companies must keep proper books of account, including, where applicable, material underlying documentation including contracts and invoices. The books of account must be such as are necessary to give a true and fair view of the state of the company's affairs and explain its transactions. The books of account must be retained for a minimum of five years from the

date they are prepared. A company that knowingly and wilfully contravenes these requirements will be subject to a penalty of USD6,100. The books of account need not necessarily be kept at the registered office, but a company must provide to its registered office, annually or with such other frequency and within such time as may be prescribed, information regarding its books of account. If a company fails to comply with this requirement without a reasonable excuse, it shall incur a penalty of USD610 and a further penalty of USD122 for every day during which such non-compliance continues. If the company is not a bank, trust company, building society, money services business, credit union, insurance company, corporate manager, mutual fund administrator or regulated fund, its accounts need not be audited as a matter of Cayman Islands law.

Beneficial Ownership

On 24 November 2023, the Parliament of the Cayman Islands passed the Beneficial Ownership Transparency Act (As Revised) (the “BOT Act”) which came into force on 31 July 2024.

The BOT Act modifies the beneficial ownership regime that has been in place in the Cayman Islands since 2017 in a manner that aligns with equivalent regimes in other jurisdictions, such as the US Corporate Transparency Act. The BOT Act extends the application of the beneficial ownership regime to most Cayman Islands entities and removes a number of exemptions that existed under the previous regime.

An entity that is subject to the BOT Act is required to identify, and monitor changes to, its beneficial owners and reportable legal entities (as such terms are defined in the BOT Act). Each in-scope entity must establish and maintain a beneficial ownership register with its corporate

service provider (CSP) and provide its CSP with certain “required particulars” with respect to its registrable beneficial owners and reportable legal entities in a timely manner to ensure the entity’s beneficial ownership register remains accurate and up to date. The details contained within that register will be filed by the CSP with the Cayman Islands competent authority (the “Competent Authority”) each month. There are various administrative fines and other sanctions, including restriction notices, that will be applied to in-scope entities that fail to comply with their obligations under the BOT Act.

The previous regime applied only to Cayman Islands companies, LLCs and limited liability partnerships (LLPs). The BOT Act has a broader scope and applies to all Cayman Islands “legal persons”, which include Cayman Islands companies, LLCs, LLPs, limited partnerships, exempted limited partnerships (ELPs) and foundation companies; and any other legal person that may be prescribed in regulations (“Legal Persons”). Non-Cayman Islands entities (including those registered as foreign persons in the Cayman Islands, typically to act as the general partner of an ELP) and certain other categories of legal person, are carved out of the BOT Act (eg, certain charities and not-for-profits).

Under the BOT Act, the definition of “beneficial owner” refers to an individual who (i) ultimately owns or controls (directly or indirectly) 25% or more of the shares, voting rights or partnership interests in the Legal Person; or (ii) otherwise exercises ultimate effective control over the management of the Legal Person; or (iii) is identified as exercising control of the Legal Person through other means. A person operating solely in the capacity of a “professional adviser” or “professional manager” (both terms defined in the Act) will not be considered a beneficial owner.

In instances where no natural person is identified as a “beneficial owner”, an individual who is a “senior managing official” of the in-scope entity, being a person such as a director, chief executive officer or another person with control or authority over the in-scope entity, will need to be named in such capacity in the entity’s beneficial ownership register, in order to comply with the BOT Act.

The majority of the exemptions that applied under the previous regime are removed or significantly restricted by the BOT Act in favour of certain “alternative routes to compliance”. Such alternative routes mean that the Legal Person would not be required to report its beneficial owners, nor establish a beneficial ownership register, but rather report limited “required particulars”.

Under the BOT Act, Legal Persons able to apply an alternative route to compliance include a Legal Person that is: (i) listed, or is a subsidiary of a listed entity, on the Cayman Islands Stock Exchange (CSX) or an approved stock exchange; (ii) licensed under a regulatory law (note this is limited to certain Cayman Islands regulatory laws); (iii) a fund registered under the Private Funds Act (As Revised) or the Mutual Funds Act (As Revised); or (iv) otherwise exempted by Cabinet (none currently).

Entities falling outside categories (i)-(iv) above (or otherwise opting not to apply an alternative route to compliance) are considered “in-scope” and are required to establish and maintain a beneficial ownership register.

The required particulars to be reported on the Legal Person’s beneficial ownership register are largely unchanged from the requirements of the previous regime with two notable exceptions,

those being that the Legal Person must also report (i) the nationality of all beneficial owners; and (ii) the nature in which the individual or “reportable legal entity” owns or exercises control of the Legal Person (whether, for example, by ownership of economic interests or voting interests in, or as a senior managing official of, the Legal Person).

Economic Substance Act (As Revised)

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

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

- banking;
- insurance;
- shipping;
- fund management;
- financing and leasing;
- headquarters;
- distribution and service centres;
- holding company; and
- intellectual property.

Automatic Exchange of Financial Account Information

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

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

All Cayman Islands “FIs” 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 FI” (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 the CRS. The different types of Non-Reporting FI under each AEOI regime are specified in the applicable AEOI Regulations.

Anti-Money Laundering and Countering of Terrorist and Proliferation Financing

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

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

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

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

As a general rule, entities that are registrable under FATCA/CRS will also be subject to the AML Regime.

The AMLRs provide that a financial services provider carrying out relevant financial business in or from the Cayman Islands cannot form a business relationship or carry out a one-off transaction, with or for another person unless

they maintain certain AML/CFT/CPF/sanctions policies and procedures, having regard to money laundering, terrorist or proliferation financing and sanctions risks and the size of the business.

Virtual Assets in the Cayman Islands

The Virtual Asset (Service Providers) Act (as amended, the “VASP Act”) provides the framework for the conduct of virtual asset services in the Cayman Islands and for the registration and licensing of entities that provide virtual asset services.

The virtual asset service providers regime, which includes subsidiary and related regulatory and financial services legislation (together, the “VASP Regime”), is being implemented in phases. The core phase one provisions of the VASP Act requiring registration came into effect on 31 October 2020. Related enforcement provisions and offences came into effect on 31 January 2021

The VASP (Amendment) Act was published on 19 December 2024 and the legislation enacting Phase 2 of the VASP regime commenced on 1 April 2025. On this date, the licensing provisions of the VASP Act as well as the Virtual Asset (Service Providers)(Amendment) Act, 2024 and the Virtual Asset (Service Providers) (Amendment) Regulations, 2025 also came into force, along with CIMA’s Rule – Virtual Asset Custodians and Trading Platforms and Statement of Guidance – Virtual Asset Custodians and Trading Platforms, and the licensing component of CIMA’s Regulatory Policy – Registration or Licensing of Virtual Asset Service Providers.

The VASP (Amendment) Act provides the regulatory basis for phase two of the Cayman Islands’ VASP Regime, which relates to the introduction

of a licencing regime for virtual asset trading platforms and virtual asset custodians.

Specifically, a currently registered person who, at the commencement of the VASP (Amendment) Act, is engaged in the provision of virtual asset custody services or the operation of a virtual asset trading platform shall apply for a licence within 90 days of the commencement of the VASP (Amendment) Act.

Additionally, the VASP (Amendment) Act introduces new operational requirements for all VASPs, including:

- **Directors:** There must be at least three directors, including one independent director.
- **Business Plan Changes:** Prior written approval from CIMA is required for any changes to the approved business plan or to provide additional virtual asset services not included in the original application.
- **Litigation Notification:** CIMA must be notified within 30 days of any litigation proceedings brought against them in any jurisdiction.
- **Fiat Currency:** Fiat currency held on behalf of clients must be in a bank regulated by CIMA or another regulator in a non-high-risk jurisdiction, ensuring segregation from the provider’s own funds.
- **Misleading Representations:** It is now an offence for VASPs to make or permit misleading representations about their virtual asset activities.

Cayman Islands Removed from FATF Grey List and EU AML List

On 27 October 2023, the Financial Action Task Force (FATF) confirmed that the Cayman Islands had been removed from the FATF’s increased “monitoring list” (often referred to as the FATF Grey List). This decision came after the Cayman

Islands demonstrated its commitment to international standards by satisfying all FATF Recommended Actions and successfully completing an on-site inspection by the FATF in 2023.

On 12 December 2023, the European Commission published Commission Delegated Regulation (EU) (the “Delegated Regulation”) amending Delegated Regulation (EU) 2016/1675 to update its list of “high-risk third countries” (“EU AML List”) identified as having strategic deficiencies in their anti-money laundering/counter-terrorist financing (AML/CFT) regimes. The Delegated Regulation provides for the removal of the Cayman Islands from the EU AML List. The Commission consulted the EU’s Expert Group on Money Laundering and Terrorist Financing before adopting the Delegated Regulation. The Cayman Islands removal from the EU AML List was made effective on 7 February 2023.

The removal from both the FATF and EU AML Lists affirms that the Cayman Islands has robust and effective AML/CFT/CPF regimes in place, reflecting the jurisdiction’s commitment to maintaining a compliant financial sector that aligns with global standards.

Cayman Islands Sanctions Regime

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

Sanctions Orders apply to any person or body incorporated or instituted in the jurisdiction, as well as any British citizen or subject ordinarily resident in the jurisdiction. The Sanctions Orders generally restrain persons from dealing in funds or economic resources owned or controlled by, or making funds or economic resources avail-

able to, persons or entities listed under the Order (“Designated Persons”). For example, a fund making a redemption payment to a Designated Person would not be permitted.

Since March 2022, significant sanctions measures with respect to Russia’s invasion of Ukraine have been published (and continue to be published) by the UK, USA and the EU. A number of Cayman Islands vehicles have been impacted by the sanctions regime as a result of direct or indirect exposure to Russian individuals and/or Russian entities (eg, where a shareholder in a Cayman Islands company is directly or indirectly controlled by a Russian sanctioned individual). While these entities have been able to apply to the Governor for a specific licence to permit an activity that would otherwise be prohibited by UK asset-freezing measures, until recently, licences could only be granted under one or more specified licensing grounds set out in the legislation. No licensing ground existed to deal with the difficulties Cayman Islands entities have faced regarding frozen investments held in Russia and sanctioned investors on their registers.

On 14 March 2024, however, a new divestment-specific licensing ground came into force may provide an opportunity for entities to apply for a specific licence to exit a frozen shareholder/LP and freeze the redemption/withdrawal proceeds in a frozen bank account in a British Overseas Territory or in the UK.

Cayman Islands Country-By-Country Reporting

The Tax Information Authority (International Tax Compliance) (Country-By-Country Reporting) Regulations (As Revised) (the “CbCR Regulations”) implement the requirements of the OECD/G20’s Base Erosion and Profit Shifting Action 13 Report (Transfer Pricing Documentation and

Country-by-Country Reporting) (the "Action 13 Report"). The CbCR Regulations largely implement the model legislation (the "OECD Model Legislation") published pursuant to the Action 13 Report.

The CbCR Regulations apply to any constituent entity ("Constituent Entity") that is "resident in the Islands" and that forms part of a multinational enterprise group ("MNE Group") for the purposes of the CbCR Regulations and the related Guidance Notes issued by the Cayman Islands Department for International Tax Cooperation (DITC). A Constituent Entity will be resident in the Islands if it is incorporated or established in the Cayman Islands, has a place of effective management in the Cayman Islands or is subject to financial supervision in the Cayman Islands.

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

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

3.4 Management Structures Companies

Companies are generally managed by a board of directors responsible for the overall management and decision-making of the company. Subject to the provision of the memorandum and articles of association for the company, the board of directors: (i) may be appointed by the shareholders and the existing board of directors can appoint additional or replacement directors; (ii) can delegate certain powers to committees or individual directors; and (iii) may also appoint officers, such as a vice-president, secretary or chief executive officer, to handle the day-to-day operations of the company.

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

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

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

Limited Liability Companies

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

Exempted Limited Partnerships

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

3.5 Directors’, Officers’ and Shareholders’ Liability

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

Directors’ Duties

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

- to act in good faith in what the director or officer believes to be the best interests of the company as a whole;

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

However, the latter duty above may be varied by the company’s articles of association, which may permit a director to vote on a matter that the director has a personal interest provided that the director has disclosed the nature of interest to the board of directors.

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

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

Breach of Duty

In the event of a breach of duty, directors may be personally liable to account to the company. Companies often indemnify their directors and officers against any liability incurred in carrying

out their functions of being a director, subject to certain exceptions (eg, liability resulting from their own actual fraud or wilful default). Companies may also include provisions in their articles of association that exculpate directors from liability for negligence, default or breach of duty, except in cases of actual fraud or wilful default.

Shareholder Liability

Subject to any express provision in the articles of association of the company to the contrary, a shareholder does not owe any fiduciary duty to the company or to any other shareholder in exercising any rights or authorities, or performing any obligations under the articles of association.

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

Piercing the Corporate Veil

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

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

4. Employment Law

4.1 Nature of Applicable Regulations

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

The Labour Act requires employers to:

- register the workplace by written notice to the Director of Labour in the Cayman Islands;
- furnish each employee with a written statement of working conditions containing specific information referenced in **4.2 Characteristics of Employment Contracts**;
- provide reasonable training to employees during their probationary period;
- maintain prescribed employee work accounts where there are ten or more employees;
- safeguard the health, ensure the safety, contribute to the welfare and provide special protective measures for employees as specified;
- notify the Director of Labour of major industrial accidents and any occupational disease involving employees;
- not discriminate; and
- provide certain minimum employee entitlements including:
 - (a) an hourly minimum wage of KYD6.00 (USD7.32);
 - (b) paid vacation leave (the amount depends on length of service);
 - (c) public holiday pay;
 - (d) up to 10 paid sick leave days annually;
 - (e) paid maternity and adoption leave;
 - (f) at least 24 consecutive hours of rest in each seven consecutive days;
 - (g) overtime pay for hours worked in excess of a standard workday/week; and
 - (h) specified advance notice of termination of employment except for certain good causes.

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

the Labour Tribunal would be deducted from any award for damages made by the court.

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

4.2 Characteristics of Employment Contracts

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

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

- length of notice the employee is obliged to give and is entitled to receive to terminate the contract of employment.

4.3 Working Time

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

4.4 Termination of Employment Contracts

Employer's Notice

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

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

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

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

Employee's Notice

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

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

4.5 Employee Representations

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

5. Tax Law

5.1 Taxes Applicable to Employees/Employers

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

5.2 Taxes Applicable to Businesses

On 1 July 2021, 130 members of the OECD/G20, including the Cayman Islands, signed an historic agreement for a "two pillar solution" to address the tax challenges arising from globalisation and the digitisation of the economy ("Two Pillar Solution").

As the name suggests, the Two Pillar Solution is a two-pronged approach, aimed to bring about "a fairer distribution of profits and taxing rights among countries and jurisdictions with respect

to the world's largest Multinational Enterprises (MNEs)".

Pillar One (the first prong) would provide a new right to tax large multinationals in the jurisdictions they operate in ("Pillar One"), while Pillar Two (the second prong) would introduce a new global minimum effective tax rate of 15%, ensuring that large multinationals pay a minimum level of tax in those jurisdictions ("Pillar Two").

Since July 2021, the Inclusive Framework on BEPS has been working towards the implementation of the Two Pillar Solution. While Pillar One is still being developed, Pillar Two is taking shape.

On 11 July 2023, an Outcome Statement was agreed by 138 members of the OECD/G20 Inclusive Framework on BEPS (including the Cayman Islands), recognising the significant progress made to date towards achieving the Two Pillar Solution ("Outcome Statement").

Pillar Two's Outcome Statement says:

"The global minimum tax under Pillar Two establishes a floor on corporate tax competition which will ensure a MNE is subject to tax in each jurisdiction at a 15% effective minimum tax rate regardless of where it operates, thereby ensuring a level playing field. This global minimum tax framework under Pillar Two is already a reality, with over 50 jurisdictions taking steps towards implementation".

While the Cayman Islands was one of the initial signatories to the agreement for a Two Pillar Solution, Pillar Two has not yet been adopted nor has a public announcement been made regarding the introduction of a minimum effective tax rate within the Cayman Islands.

Please refer to **5.1 Taxes Applicable to Employees/Employers**.

5.3 Available Tax Credits/Incentives

Please refer to **5.1 Taxes Applicable to Employees/Employers**.

5.4 Tax Consolidation

Please refer to **5.1 Taxes Applicable to Employees/Employers**.

5.5 Thin Capitalisation Rules and Other Limitations

The Cayman Islands currently has no thin capitalisation rules.

5.6 Transfer Pricing

The Cayman Islands currently has no transfer pricing rules.

5.7 Anti-Evasion Rules

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

5.8 Tariffs

The Cayman Islands do not have a tariff regime or similar economic protections like many other countries, however the Cayman Islands Customs & Border Control (CBC) unilaterally impose customs duties on certain goods imported into the jurisdiction to generate local tax revenue. If you are considering importing goods to the Cayman Islands it is advisable to consult a local expert or CBC for the most accurate and up-to-date information.

6. Competition Law

6.1 Merger Control Notification

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

- electricity markets, including the generation, transmission, distribution and supply of electricity;
- fuels markets;
- information and communications technology markets, including broadcasting and content services; and
- water sector, including the production, distribution, supply and treatment of water.

The Utility Regulation and Competition Office (OfReg) was established pursuant to the Utility Regulation and Competition Act (As Revised) (URCA), with the responsibilities to:

- promote appropriate, effective and fair competition;
- protect the short- and long-term interests of consumers in relation to utility services and in so doing:
 - (a) supervise, monitor and regulate any service provider providing any of the referenced utility services;
 - (b) ensure that utility services are satisfactory and efficient and that charges imposed in respect of utility services are reasonable and reflect efficient costs of providing the services; and
 - (c) publish information, reports and other documents relating to utility services (ie, keep the public informed of the different utilities service providers);

- (d) promote innovation and facilitate economic and national development.

6.2 Merger Control Procedure

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

To approve any merger transaction, OfReg must consider whether such merger transaction would have material adverse effects on the consumer and citizens of the Cayman Islands.

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

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

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

6.3 Cartels

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

6.4 Abuse of Dominant Position

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

7. Intellectual Property

7.1 Patents

Patents

What may be registered

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

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

to the Cayman Islands.

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

Rights, subsistence duration

The owner of an extended patent has (expressly, by law) equivalent rights and remedies to those available in the UK. Such protection and rights will be effective from the time the right arose in the UK and subsist if the protections and rights remain in force in the UK, though no local infringement proceeding may be sustained for

any actions occurring prior to the local extension. Relevant local fees must be paid to maintain the extension.

Extension process

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

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

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

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

Disputes/enforcement

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

If a bad faith assertion of patent infringement is made by any person (including, normally, the owner or licensee), an aggrieved party may bring a claim against the person making the assertion

for injunctions, other equitable relief, or damages (including aggravated and/or exemplary damages). The Cayman Islands is a “costs-shifting” or “loser pays” jurisdiction: that is, the losing party typically is obliged to pay the legal costs (or a proportion of them) of the winning party.

7.2 Trade Marks

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

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

- “trade mark” any sign capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of another undertaking and may consist of words, designs, numerals, letters or the shape of goods or their packaging;
- “certification mark” a mark indicating that the goods or services in connection with which it is used are certified by the proprietor of the mark in respect of origin, materials, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics; and
- “collective mark” a mark distinguishing the goods or services of members of an association which is the proprietor of the mark from those of other undertakings.

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

Subject to payment of relevant fees (including relevant annual fees), the rights of the mark reg-

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

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

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

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

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

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

ment, the aggrieved party may have an action against the person making the threat.

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

Apart from registered trade marks, Cayman Islands law provides for an action in “passing off”, generally considered protection of “unregistered” trade marks. Typically, a passing-off action requires three elements: i) goodwill (generally created by actual trade); ii) misrepresentation; and iii) damage. Generally, the misrepresentation is that person B misrepresents that their goods are actually the goods of person A (who owns the goodwill), causing person A harm. Similar relief to that available to trade mark infringement (damages, injunctions, etc) will usually be available when passing off is established.

7.3 Industrial Design

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

Rights, Subsistence, Duration

The owner of an extended design has (expressly, by law) equivalent rights and remedies to those available in the UK. Such protection and rights will be effective from the time the right arose in the UK and subsist if the protections and rights remain in force in the UK, though no local infringement proceeding may be sustained for

any actions occurring prior to the local extension. Relevant local fees must be paid to maintain the extension.

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

Extension Process

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

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

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

Disputes/Enforcement

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

If a bad faith assertion of design rights infringement is made by any person (including, normally, the owner or licensee), an aggrieved party may bring a claim against the person making the

assertion for injunctions, other equitable relief, or damages (including aggravated and/or exemplary damages). The Cayman Islands is a “costs-shifting” or “loser pays” jurisdiction: that is, the losing party typically is obliged to pay the legal costs (or a proportion of them) of the winning party.

7.4 Copyright

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

The copyright regime provides for the protection of:

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

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

Copyright may be enforced by court action, generally in the Grand Court. Remedies for copyright infringement include damages, injunctions, delivery-up of the infringing work, right to seizure of infringing work or any other remedy that would be available in respect of any other property right. Criminal sanctions for copyright infringement are also available.

7.5 Others

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

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

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

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

8. Data Protection

8.1 Applicable Regulations

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

8.2 Geographical Scope

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

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

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

The data protection principles are broadly speaking like the principles set out in Article 5

of the GDPR, and provide, for example, that personal data must be processed fairly and only for specified lawful purposes, and that personal data must be processed only to the extent adequate/relevant and not excessive, etc. Other DPA notable requirements include responding to access/correction requests, and notifying personal data breaches.

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

8.3 Role and Authority of the Data Protection Agency

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

9. Looking Forward

9.1 Upcoming Legal Reforms

The Cayman Islands Ministry for Financial Services has previously issued consultation papers on proposed amendments to the ELP Act. The proposed amendments intended to introduce additional structural flexibility and efficiencies for ELPs and include:

- provisions to facilitate statutory mergers between one or more ELPs, between one or more ELPs and/or one or more exempted companies or LLCs or between one or more ELPs and one or more foreign entities provided such foreign entities have separate legal personality, consistent with the existing Cayman Islands statutory merger regimes applying to exempted companies and LLCs; and
- a provision to facilitate the conversion of an exempted company or an LLC to an ELP.

The consultation ended on 20 February 2024, and updates are expected once the new Cabinet is sworn in and approves progressing legislative initiatives.

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