



GETTING THE  
DEAL THROUGH 

# Fund Management 2018

Reproduced with permission from Law Business Research Ltd  
This article was first published in June 2018  
For further information please contact [editorial@gettingthedealthrough.com](mailto:editorial@gettingthedealthrough.com)

Publisher  
Tom Barnes  
[tom.barnes@lbresearch.com](mailto:tom.barnes@lbresearch.com)

Subscriptions  
James Spearing  
[subscriptions@gettingthedealthrough.com](mailto:subscriptions@gettingthedealthrough.com)

Senior business development managers  
Adam Sargent  
[adam.sargent@gettingthedealthrough.com](mailto:adam.sargent@gettingthedealthrough.com)

Dan White  
[dan.white@gettingthedealthrough.com](mailto:dan.white@gettingthedealthrough.com)



Published by  
Law Business Research Ltd  
87 Lancaster Road  
London, W11 1QQ, UK  
Tel: +44 20 3780 4147  
Fax: +44 20 7229 6910

© Law Business Research Ltd 2018  
No photocopying without a CLA licence.  
First published 2015  
Fourth edition  
ISBN 978-1-78915-026-1

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between April and May 2018. Be advised that this is a developing area.

Printed and distributed by  
Encompass Print Solutions  
Tel: 0844 2480 112



## CONTENTS

<b>British Virgin Islands</b>	<b>5</b>	<b>Luxembourg</b>	<b>53</b>
Ayana S Hull Harney Westwood & Riegels		Marc Meyers and Veronica Aroutiunian Loyens & Loeff Luxembourg Sàrl	
<b>Cayman Islands</b>	<b>9</b>	<b>Norway</b>	<b>59</b>
Daniella Skotnicki Harney Westwood & Riegels		Karl Rosén and Elin Haugen Advokatfirmaet Grette AS	
<b>Cyprus</b>	<b>15</b>	<b>Portugal</b>	<b>66</b>
Aki Corsoni-Husain, Elina Mantrali and Irene Panayidou Harneys Aristodemou Loizides Yiolitis LLC		Pedro Simões Coelho, Ricardo Seabra Moura and Carlos Filipe Couto Vieira de Almeida	
<b>Germany</b>	<b>21</b>	<b>South Africa</b>	<b>71</b>
Tarek Mardini and Sebastian Käpplinger P+P Pöllath + Partners		Johan Loubser and Jessica Blumenthal ENSafrica	
<b>Greece</b>	<b>28</b>	<b>Sweden</b>	<b>78</b>
Michael Tsibris and Giannis Koumettis Souriadakis Tsibris		Fredrik Wilkens, Emma Stuart-Beck and Lave Nilsson Advokatfirman Vinge	
<b>Hong Kong</b>	<b>34</b>	<b>Switzerland</b>	<b>84</b>
Vivien Teu and Christina Suen Vivien Teu & Co LLP		Lukas Weinmann and Urs Hofer HSW Legal Ltd	
<b>Ireland</b>	<b>40</b>	<b>United Kingdom</b>	<b>91</b>
Sarah Cassidy and Shane Geraghty Dillon Eustace		Michelle Moran and Rodney Smyth K&L Gates LLP	
<b>Japan</b>	<b>47</b>	<b>United States</b>	<b>99</b>
Kiyomi Kikuchi and Kazuyuki Wakasa TMI Associates		Michael W McGrath, Clair E Pagnano and Pablo J Man K&L Gates LLP	

# Preface

## Fund Management 2018

Fourth edition

**Getting the Deal Through** is delighted to publish the fourth edition of *Fund Management*, which is available in print, as an e-book and online at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

**Getting the Deal Through** provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Hong Kong and Luxembourg.

**Getting the Deal Through** titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

**Getting the Deal Through** gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise.

GETTING THE  
DEAL THROUGH 

London  
May 2018

# Cayman Islands

Daniella Skotnicki

Harney Westwood & Riegels

---

## Fund management

### 1 How is fund management regulated in your jurisdiction? Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

The Cayman Islands Monetary Authority (CIMA) is the main regulatory body in the Cayman Islands that oversees open-ended investment funds, fund managers and those marketing investment funds. The statutory framework under which CIMA derives its supervisory responsibilities (in respect of investment funds and investment managers) is set out in the Mutual Funds Law and the Securities Investment Business Law (the SIB Law).

### 2 Is fund administration regulated in your jurisdiction?

Only mutual fund administrators that are established in the Cayman Islands are required to be regulated by CIMA. Mutual fund administration is defined in the Mutual Funds Law as the management or administration of a 'mutual fund' (as defined in question 24), the provision of the principal office of the mutual fund in the Cayman Islands or the provision of an operator to the mutual fund.

If a mutual fund administrator is required to be regulated by CIMA, it will need to apply for a licence, the granting of which will be based upon, among other things, the administrator's abilities and the expertise of its management team and employees.

### 3 What is the authorisation or licensing process for funds? What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

In broad terms, the Mutual Funds Law requires mutual funds to be licensed or regulated as such. Closed-ended funds (those that issue equity interests that are not redeemable at the option of the holder) are not required to be regulated as mutual funds by CIMA, although, in practice, CIMA will accept voluntary submission to regulation by closed-ended funds (and this is often attractive where, for marketing purposes, it is helpful for the fund to be subject to regulatory oversight in its jurisdiction of establishment). See question 25 for details on the authorisation and licensing process for funds.

Provided a fund manager of a Cayman Islands investment fund is not established or does not otherwise register itself in the Cayman Islands, it will not be subject to any regulation by CIMA or any other authority in the Cayman Islands.

Operators of mutual funds, such as directors or trustees, are subject to registration or licensing requirements (see question 28).

### 4 What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?

Fund regulation by the authorities in the Cayman Islands does not have extraterritorial effect. An overseas manager can provide services to a Cayman Islands investment fund and there is no requirement for the overseas manager to be authorised unless that manager formally establishes itself in the Cayman Islands.

---

### 5 Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator?

If the fund manager is licensed under the SIB Law, no shares or partnership interests (as applicable) in the fund manager may be issued, voluntarily transferred or disposed of without the approval of CIMA. There is no such requirement in respect of fund managers that are not licensed by CIMA.

---

### 6 Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?

There are no applicable restrictions, save in respect of a general partner of a Cayman Islands-domiciled limited partnership that may fall within scope of registration requirements if it acts as investment manager or adviser of the partnership and is remunerated separately (from the terms of the partnership agreement) for such activity.

---

## Fund marketing

### 7 Does the marketing of investment funds in your jurisdiction require authorisation?

The Companies Law of the Cayman Islands restricts shares of an 'exempted company' (the most common corporate form adopted by investment funds in the Cayman Islands) from being offered to the public in the Cayman Islands unless those shares are listed on the Cayman Islands Stock Exchange. This restriction is contained in the Companies Law and is not replicated in the statutory framework governing limited partnerships or unit trusts. For the purposes of the Companies Law, the term 'public in the Cayman Islands' should be taken as referring to a non-targeted group of prospective investors in the Cayman Islands and certain entities and residents are excluded from the definition, including other Cayman Islands investment funds that are generally structured as exempted companies or exempted limited partnerships.

A fund that is not established in the Cayman Islands and that wishes to offer its equity interests to the public in the Cayman Islands will need to either register as a mutual fund with CIMA (as above) or market its equity interests through a person who is appropriately licensed by CIMA under the terms of the SIB Law (provided that the equity interests offered to the public in the Cayman Islands are listed on a stock exchange approved by CIMA or the fund is regulated by an overseas regulatory authority approved by CIMA).

---

### 8 What marketing activities require authorisation?

If a Cayman entity, a foreign entity registered in the Cayman Islands or an entity with a place of business in the Cayman Islands, is arranging deals in securities with a view to another person dealing in securities, or if it is participating in the arrangements for dealing in securities, then it will fall within the scope of the SIB Law and, as such, may be required to obtain a licence from, or otherwise register with, CIMA, before engaging in such activities.

**9 What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?**

An entity that is performing fund marketing activities from within the Cayman Islands (whether that entity is incorporated or registered in, registered as a foreign entity in or otherwise has established a place of business in the Cayman Islands) is required by the terms of the SIB Law to obtain a licence from, or otherwise register with, CIMA, prior to engaging in such activities.

**10 If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?**

There is no requirement for a local entity to be involved in the fund marketing process.

**11 What restrictions are there on intermediaries earning commission payments in relation to their marketing activities in your jurisdiction?**

There are no restrictions on intermediaries earning commission payments in relation to their marketing activities in the Cayman Islands.

### Retail funds

**12 What are the main legal vehicles used to set up a retail fund? How are they formed?**

The statutory and regulatory framework in the Cayman Islands has typically attracted funds that seek investment from high net worth individuals and other sophisticated and institutional investors, rather than funds aiming to raise money through retail channels. The minimum initial subscription in respect of CIMA-registered funds is US\$100,000, although there are regulatory categories that would facilitate the registration with, or licensing by, CIMA, of funds wishing to raise money from sub-institutional investors.

The choice of vehicle and the approaches to their formation are the same for non-retail funds (see question 23).

**13 What are the key laws and other sets of rules that govern retail funds?**

The key statutory and regulatory provisions that apply in respect of retail funds are the same as those that apply in respect of non-retail funds. The Retail Mutual Funds (Japan) Regulations (as amended) (the Regulations) apply specifically to Cayman Islands retail mutual funds marketed to Japanese investors. The Regulations allow for mutual funds that are licensed under the Mutual Funds Law that have been, or are intended to be, exclusively offered to Japanese retail investors to comply with certain securities laws and regulations of Japan (see question 24).

**14 Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?**

A retail fund is, for the most part, subject to the same regulation and licensing as a non-retail fund; however, the options for the regulatory class that a fund might fall under are more limited for retail funds. A retail fund can be a licensed mutual fund, an administered mutual fund or a registered mutual fund (see question 25).

**15 Who can market retail funds? To whom can they be marketed?**

See questions 7 to 10.

**16 Are there any special requirements that apply to managers or operators of retail funds?**

As noted in question 13, the statutory and regulatory framework applying to investment funds in the Cayman Islands does not distinguish between retail funds and non-retail funds. Accordingly, there are no special requirements that apply to managers or operators of retail funds.

**17 What are the investment and borrowing restrictions on retail funds?**

There are no restrictions.

**18 What is the tax treatment of retail funds? Are exemptions available?**

The tax treatments and exemptions available to non-retail funds apply equally to retail funds. See question 29.

**19 Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?**

There are no requirements for assets of a Cayman fund to be held by a separate custodian located in the Cayman Islands, although the fiduciary duties that the directors of the fund would have to safeguard the assets of the fund should be noted.

**20 What are the main governance requirements for a retail fund formed in your jurisdiction?**

See question 31 regarding the governance requirements for Cayman investment funds. No distinction is made between retail and non-retail funds.

**21 What are the periodic reporting requirements for retail funds?**

The periodic reporting requirements for non-retail funds apply equally to retail funds. See question 32.

**22 Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?**

Yes, as with non-retail funds, such restrictions can be contained in the constitutive documents of the fund or otherwise in the terms of issue of the relevant equity interests.

### Non-retail pooled funds

**23 What are the main legal vehicles used to set up a non-retail fund? How are they formed?**

#### Open-ended funds

##### Companies

Companies are the most common vehicle for open-ended funds. Specifically, the exempted company limited by shares is the vehicle of choice, accounting for 68 per cent of regulated funds, with exempted segregated portfolio companies making up a further 9 per cent of the market (based on the 2014 Investments Statistical Digest produced by CIMA).

A standard exempted company limited by shares can be set up on a same-day basis with a filing of the company's memorandum and articles of association with the Registrar of Companies. No prior government consent or approval are required. The memorandum of association must contain certain basic information about the company, including its registered office, its authorised share capital and the objects for which it is incorporated. Shares can be denominated in any currency and denomination. There is no minimum or maximum amount prescribed for authorised, issued or paid-up share capital (although at least one share must be in issue at the time of registration).

An exempted segregated portfolio company is a single legal entity within which various segregated portfolios may be established. The assets and liabilities of each segregated portfolio are legally separate from those of other segregated portfolios. A segregated portfolio company is formed in a similar manner to an exempted company limited by shares.

##### Unit trusts

The second most common form of regulated fund is the exempted unit trust. Unit trusts are based on English trust law, but are modified by the Trusts Law of the Cayman Islands for suitability as investment fund vehicles. Under a unit trust arrangement, investors contribute funds to a trustee that holds those funds on trust for the investors, and each investor is directly entitled to share pro rata in the trust's assets. An advantage of the unit trust is that it may be structured as an 'umbrella' unit trust so that different investments may be allocated to different 'sub-trusts' with investors subscribing for units in a particular sub-trust. Unlike segregated portfolio companies, however, there is no statutory segregation of assets and liabilities of each sub-trust.

A unit trust is formed through a declaration of trust by the trustee alone or by a trust deed executed by both the trustee and the investment manager.

#### **Limited partnerships**

Exempted limited partnerships (ELPs) accounted for only 10 per cent of regulated funds in 2014. ELPs are most commonly used for closed-ended funds or private equity funds and are described in more detail below.

#### **Closed-ended funds**

The vehicles that can be used for closed-ended funds are the same as for open-ended funds. The most popular vehicle used for closed-ended funds is the ELP. Cayman ELPs are governed by a combination of equitable and common law rules (based on English common law) and also statutory provisions, pursuant to the Exempted Limited Partnership Law 2014. An ELP may be formed for any lawful purpose to be carried out and undertaken either in or from within the Cayman Islands or elsewhere upon the terms, with the rights and powers, and subject to the conditions, limitations, restrictions and liabilities set forth in the Exempted Limited Partnership Law.

An ELP is a creature of contract (and thus does not have separate legal personality) and is constituted by an agreement of limited partnership and registered in the Cayman Islands by filing a registration statement with the Registrar of Exempted Limited Partnerships containing the following details:

- the name of the partnership;
- the general nature of the business and term of the partnership;
- the address of the registered office of the partnership;
- the name and address of the general partner; and
- a declaration that the partnership shall not undertake business with the public in the Cayman Islands other than so far as may be necessary to conduct business outside the Cayman Islands.

#### **24 What are the key laws and other sets of rules that govern non-retail funds?**

##### **Open-ended funds**

The Mutual Funds Law is the principal legislation relevant to the regulation of investment funds in the Cayman Islands. CIMA is the regulatory body responsible for compliance with these regulations and has broad powers to ensure the protection of investors.

The Mutual Funds Law refers to investment funds as 'mutual funds' and as such defines a mutual fund as a company, unit trust or partnership incorporated or otherwise carrying on business in the Cayman Islands, that issues equity interests for the purpose of pooling investor funds, with the aim of spreading investment risk, and enables investors to receive profits or gains from investments. The reference to 'equity interests' is important because this excludes debt instruments (including warrants, convertibles and *sukuk* instruments) and tokenised interests; funds issuing such instruments will not be required to be registered with CIMA. The scope of regulation extends to Cayman incorporated or established master funds that have one or more CIMA-regulated feeder funds and hold investments and conduct trading activities.

There are exemptions that allow certain funds to fall outside the scope of the Mutual Funds Law. Funds with only one investor do not 'pool funds' and as such fall outside the definition of a mutual fund. Investment funds with 15 investors or fewer, the majority of whom have the power to appoint or remove the operators of the investment fund (ie, the directors, the general partner or the trustee, as the case may be), are exempt from the licensing and registration provisions of the Mutual Funds Law. This latter exemption does not apply to Cayman Islands-regulated master funds.

There are no restrictions imposed by the laws and rules of the Cayman Islands on investment strategies of hedge funds, or their use of leverage, shorting or other techniques. There is no concept of 'eligible investor' in a Cayman-registered fund.

Directors of funds regulated by CIMA, that are companies, are required to register with CIMA under the Directors Registration and Licensing Law 2014. This requirement does not extend to CIMA-registered partnerships and trusts and, as such, will not apply to the directors of their general partners or to trustees of a trust. The Directors Registration and Licensing Law is intended to allow CIMA to verify

certain basic information in respect of directors of CIMA-registered funds and applies to directors wherever they are located, not just to Cayman Islands-based directors.

#### **Closed-ended funds**

Closed-ended funds or private equity funds that do not permit redemption or repurchase of interests fall outside the definition of a mutual fund and as such do not fall within the scope of the Mutual Funds Law. Closed-ended funds are therefore unregulated.

All investment funds must comply with relevant anti-money laundering legislation and regulations. The Cayman Islands government and CIMA actively work with the Organisation for Economic Co-operation and Development, the Financial Action Task Force and regulators in numerous jurisdictions to ensure international standards of good practice are maintained and observed. Further, all funds, whether regulated by CIMA or not, are subject to the Proceeds of Crime Law (PCL), the Terrorism Law and the Misuse of Drugs Law.

#### **25 Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?**

The following applies to funds that allow redemption of equity interests at the option of the investor. As noted in question 24, closed-ended funds (ie, those that do not permit redemption of equity interests at the option of the holder) fall outside of the Mutual Funds Law but may elect to become subject to regulation as if they were mutual funds.

Three categories of fund are required by the terms of the Mutual Funds Law to submit to regulation by CIMA: the licensed mutual fund, the administered mutual fund and the registered mutual fund.

The licensed mutual fund is the least common type of regulated mutual fund, as it involves an approval process such that the mutual fund itself is licensed (as opposed to being able to only rely on the licence of the administrator in the case of administered mutual fund or being exempt from obtaining the licence in the case of a regulated mutual fund). In granting a licence, CIMA will consider whether each promoter is of sound reputation, the administration of the fund will be undertaken by sufficiently experienced persons who are fit and proper to be directors, managers or officers (as the case may be) and the business of the fund and the offer of equity interests will be carried out in a proper manner.

Instead of applying for its own licence, a fund may seek to rely on the existing licence of a licensed fund administrator based in the Cayman Islands. This type of mutual fund is favoured by investment managers who wish to have a minimum initial subscription per investor that is lower than US\$100,000, but who prefer not to go through the approval process for a licensed mutual fund outlined above. An administered mutual fund is the only type of regulated fund that must appoint an administrator based in the Cayman Islands; licensed and registered mutual funds may appoint an administrator in any jurisdiction.

The most common type of investment fund regulated by CIMA is the registered mutual fund, accounting for approximately 96 per cent of the funds regulated by CIMA (as of December 2016). Registered mutual funds are exempt from the requirement to be licensed or administered on the basis that either each investor must subscribe for equity interests in an amount not less than US\$100,000 or the equity interests of the fund are listed on a stock exchange recognised by CIMA.

All mutual funds regulated by CIMA, other than master funds, must have a current offering document, which must describe the equity interests of the mutual fund in all material respects and must contain all material information to enable a prospective investor to make an informed decision as to whether to subscribe. The offering document must be filed with CIMA, together with the prescribed particulars that are set out in forms that summarise key provisions of the offering document.

#### **26 Who can market non-retail funds? To whom can they be marketed?**

Restrictions apply to the entity performing a marketing function as well as upon whom they target such marketing. See question 25.

#### **27 Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?**

The hurdle to entry to registered mutual funds is a minimum initial investment (whether by subscription or transfer) of US\$100,000; otherwise no other investor-qualification criteria apply.

### 28 Are there any special requirements that apply to managers or operators of non-retail funds?

There is no requirement for the manager of a Cayman fund to be resident or domiciled in the Cayman Islands and no Cayman Islands laws or regulations will apply to that manager.

Investment managers that wish to establish themselves in the Cayman Islands need to comply with the provisions of the SIB Law. The SIB Law regulates 'securities investment business', which broadly encompasses managing securities, arranging deals in securities and advising on deals in securities. 'Securities' are widely defined and include shares, partnership interests, trust units, debt investments, warrants, options, futures and contracts for differences.

Broadly, the SIB Law provides that the investment manager will need to be licensed under the SIB Law unless it is regulated in respect of securities investment business by a recognised overseas authority (eg, the Financial Conduct Authority), it is carrying on securities investment business exclusively to companies within the manager's group or it is managing the assets of only certain categories of high net worth or sophisticated investors, in which case it will be able to take advantage of an annual exemption filing instead. The definition of 'sophisticated investors' includes mutual funds regulated by CIMA, so the majority of investment managers are, in practice, able to take advantage of the exemption filing.

#### Open-ended funds

The requirements that apply to operators of a fund depend on the type of vehicle used for the fund. An exempted company or segregated portfolio company must have at least two directors if it is regulated by CIMA. As noted in question 24, directors of a company that is regulated by CIMA must also be registered with CIMA under the Directors Registration and Licensing Law.

If a unit trust is regulated as a licensed fund, then the trustee will need to be licensed under the Banks and Trust Companies Law as a trust company.

#### Closed-ended funds

If a closed-ended fund is not regulated by CIMA then there are no requirements for its directors to be registered with CIMA. Investment managers must still adhere to the requirements under the SIB Law, as discussed above.

### 29 What is the tax treatment of non-retail funds? Are any exemptions available?

The Cayman Islands has no direct taxation of any kind. There are no income, corporation, capital gains or withholding taxes or death duties. It is possible for all types of fund vehicles – the company, the unit trust and the limited partnership – to apply to the government of the Cayman Islands for a written undertaking that they will not be subject to various forms of direct taxation, for a minimum period, which in the case of a company is 20 years, and in the case of a unit trust and a limited partnership is 50 years.

### 30 Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

There are no requirements for assets to be held by a separate custodian located in the Cayman Islands.

### 31 What are the main governance requirements for a non-retail fund formed in your jurisdiction?

All corporate entities need to be registered with the Registrar of Companies to be legally formed. There is a registration fee, which must be paid annually, and if an entity is late in paying, it may not be in good standing. The government must be informed of any changes to the fund's directors or officers.

As noted in question 25, some funds will need to register with CIMA and will be regulated as a result. Such funds will need to pay annual fees and file audited accounts and a summary form each year. If the fund is CIMA registered, material updates or amendments to the fund's offering document must also be submitted to CIMA. This can include changes to offering terms, the fund's directors and officers, the investment manager's principals or the fund's service providers.

While an exempted company is not required to hold annual general meetings of shareholders, CIMA has released a statement of guidance that establishes key principles of good governance that must be observed by each Cayman Islands-regulated mutual fund. Such principles require, inter alia, the board of directors or other governing body to:

- properly oversee the activities of the fund's service providers;
- suitably identify, disclose and manage all conflicts of interest; and
- meet at least twice a year or otherwise more frequently as determined by the size, nature and complexity of the fund.

The directors are also encouraged to maintain accurate and complete records of meetings and board decisions.

### 32 What are the periodic reporting requirements for non-retail funds?

All funds regulated by CIMA must, as long as there is a continuing offering, update their offering documents and prescribed particulars within 21 days of any material change, and must refile the updated offering document or the prescribed particulars with CIMA within such 21-day period.

All funds regulated by CIMA must also have their accounts audited annually and such audited financial statements must be filed with CIMA within six months of the year end of the fund, together with an annual return form including prescribed details, signed by a director. Such audited financial statements must be signed off by an approved Cayman Islands-based auditor.

Funds regulated by CIMA must also pay an annual fee in January each year (currently, approximately US\$4,270 for funds other than master funds, for which the fee is approximately US\$3,050).

#### Separately managed accounts

### 33 How are separately managed accounts typically structured in your jurisdiction?

Managed accounts are not typically established in the Cayman Islands. If investors require segregation of assets, the typical structure would be the use of an exempted company registered as a segregated portfolio company.

### 34 What are the key legal issues to be determined when structuring a separately managed account?

There are no specific Cayman Islands legal requirements, and indemnification provisions would depend on the contractual arrangement.

### 35 Is the management or marketing of separately managed accounts regulated in your jurisdiction?

The manager or entity marketing the separately managed account is regulated in the same manner as fund management. The separately managed account, however, is not regulated by CIMA as it is not classed as a 'mutual fund' as there is no pooling of investor funds.

#### General

### 36 Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?

The statutory and regulatory framework in the Cayman Islands has been built on the back of partnership between government, CIMA and industry, and there is every reason to expect the framework to evolve as demands on, and of, the industry evolve. See 'Update and trends', particularly regarding the implementation of the beneficial ownership register and the increased penalties available to CIMA.

### 37 Outline any specific requirements for stock-exchange listing of retail and non-retail funds.

The process of listing equity securities on a stock exchange would be driven by the rules of the relevant exchange; popular exchanges for the listing of equity interests of Cayman Islands funds include the Cayman Islands Stock Exchange, the Channel Islands Securities Exchange and the Irish Stock Exchange.



## Update and trends

The past year has seen a number of legislative developments in the Cayman Islands. In addition, transparency and information exchange remain a top focus for the jurisdiction.

### Beneficial ownership register

Following lengthy discussions with the UK authorities, the Cayman Islands government approved legislation to introduce beneficial ownership registers for certain Cayman Islands companies in 2017.

Essentially, Cayman companies that are subject to some form of direct or indirect regulatory oversight are likely to be exempt from the requirements to maintain a beneficial ownership register.

For the investment funds industry, this means that companies structured as Cayman Islands investment funds, whether hedge funds or private equity funds, Cayman Islands investment managers registered as 'excluded persons' under the SIB Law, and general partners of private equity funds or other investment funds, will not have to maintain beneficial ownership registers provided they fall within one of several exemptions contained in the legislation.

There are currently no proposals to extend the registers to cover beneficial ownership of limited partners of Cayman Islands exempted limited partnerships or foreign companies and foreign limited liability companies registered in the Cayman Islands.

The UK authorities will be able to request that a search of information held on registers be done by the competent authority in the Cayman Islands. The register will otherwise be private and confidential and not open to public inspection. The UK has introduced legislation requiring the Cayman Islands to make such registers publicly available. The Cayman Islands government has indicated that it will not accept such measures.

### Anti-Money Laundering Regulations (the AML Regulations)

Changes have been made to the Cayman Islands AML regime to bring Cayman in line with international best practice. The main change for investment funds is the requirement to appoint natural persons as a money laundering reporting officer (MLRO), deputy money laundering reporting officer (DMLRO) and AML compliance officer (AMLCO). Although performance of these functions can still be delegated to an administrator or another service provider, this change means that most funds will now need to appoint natural persons to these roles and then review their fund administration agreements to ensure that the delegation of the function is dealt with and update their documentation and procedures regarding AML compliance generally.

### Unregulated funds: now explicitly subject to AML regulations

Unregulated funds (eg, hedge funds exempt from registration with CIMA or private equity funds) will need to comply with the PCL and the AML Regulations with effect from 31 May 2018.

In practice, unregulated funds will achieve AML compliance in much the same way that funds regulated by the Mutual Funds Law have done to date, namely by delegating these functions to a service provider, such as a regulated administrator or investment manager.

The most straightforward option available is to delegate to an administrator or investment manager that is regulated for AML purposes in a recognised jurisdiction (eg, Cayman Islands, Bermuda or Ireland), with equivalent standards to the AML Regulations. In such cases, compliance by the delegate with its jurisdiction's regulations would be sufficient to ensure that the Cayman-based fund is compliant with its obligations, provided the fund has appointed natural persons as a MLRO, DMLRO and AMLCO before it delegates these functions, as described below.

### All funds: the role of the MLRO, DMLRO and AMLCO

The AML Regulations, Guidance Notes issued in December 2017 and a notice issued by CIMA in April 2018 now require all funds that are subject to the AML Regulations to designate natural persons as their MLRO, DMLRO and AMLCO. Once natural persons have been appointed, performance of these functions can then be delegated to a third party, such as the fund's administrator.

Funds can continue to delegate the function of reporting suspicious activities to their administrator in accordance with their own regulatory obligations once they have appointed these individuals. New funds registering with CIMA from 1 June 2018 will need to confirm who has been appointed to these roles as part of the registration process. Existing registered funds have until 30 September 2018 to confirm who has been appointed, via a filing on CIMA's portal.

For those funds that now need to appoint an MLRO, DMLRO and AMLCO, these are management level roles and the responsibilities of the MLRO and DMLRO are substantial and include assessing reports

of suspicious activity in relation to money laundering or terrorist financing and determining whether to report such suspicious activity to the Cayman Islands Financial Reporting Authority. Where the fund does not have its own employees (which will be the case for most funds), the Guidance Notes detail the criteria that should be applied in selecting an appropriate person to fill each role and provide guidance on the delegation and outsourcing decision making process.

### Revised regulations regarding accepting subscription payments from bank accounts located in regulated jurisdictions

Until the new regime was adopted, for AML purposes, funds and their administrators had not been obliged to obtain full know your customer (KYC) documentation from investors whose accounts are held in their name at a bank regulated in an equivalent AML jurisdiction, on the basis that the appropriate due diligence had been undertaken by the bank.

As part of the overarching risk-based approach that is now key to the AML regime, the AML Regulations require that, before the fund receives subscription monies from an investor's account held at a regulated bank, the fund (or its delegate) will need to: conduct an assessment of the level of risk relating to the investor (eg, low, medium or high) and have identified the risk as low; and have identified the customer and its beneficial owner and assessed whether or not full KYC documentation or further information is required. CIMA has confirmed that the Guidance Notes are also being amended to clarify these provisions. In reality, very few fund administrators relied on the previous exemption and obtained full KYC documentation from all investors regardless. Where that may not have been the case, the practical consequence of this will be that some investors in Cayman Islands funds will be required to provide full KYC documentation in more situations than previously.

### Substantial administrative fines for breaches of the AML Regulations

Amendments to the Monetary Authority Law and associated regulations came into force on 15 December 2017, giving CIMA increased powers to impose administrative fines for breaches of certain regulatory laws. These fines can initially be imposed for breaches of the AML Regulations, with a maximum fine of up to US\$1,219,500.

CIMA must classify breaches as minor, serious or very serious, and will apply these criteria when it exercises its discretion to impose fines. The minimum fine for a breach considered to be 'minor' is US\$6,098.

Once further regulations under the Monetary Authority Law are adopted, we fully expect CIMA to use these new powers to take increased action for breaches of all regulatory laws, including the Mutual Funds Law and the SIB Law (eg, failure to make filings within time limits without applying for exemptions or extensions).

### New tax offence in the Cayman Islands related to AML

Changes to the Cayman Islands Penal Code (the law that contains most criminal offences in the Cayman Islands) mean that a new criminal tax offence has been introduced into Cayman Islands law. It is now a criminal offence when a person, with intent to defraud the Cayman Islands government:

- wilfully makes, delivers or causes false or fraudulent information to be made to a person employed in the public service relating to the collection of money for the purposes of general revenue;
- wilfully omits information required to be provided to a person employed in the public service relating to the collection of money for the purposes of general revenue; or
- wilfully obstructs, hinders, intimidates or resists a person employed in the public service in the collection of money for the purposes of general revenue.

Without any specific punishment provided, the offence will be punishable with imprisonment for four years and with a fine.

The main offence of tax evasion is likely to be of limited applicability given the lack of direct taxation in the Cayman Islands. The real impact of the new offence is part of the Cayman Islands AML framework because overseas tax evasion is now 'criminal conduct' and the proceeds of such conduct would be the proceeds of crime. The PCL requires 'dual criminality' for offences that are not committed in the Cayman Islands in that the conduct must not only be an offence in the place where it is committed (if not the Cayman Islands) but must also be an offence in the Cayman Islands in order for it to be criminal conduct. Failure to make the required disclosure, when a person knows or suspects or has reasonable grounds for knowing or suspecting that another person is engaged in criminal conduct (eg, tax evasion overseas), in the absence of any defence, is punishable with imprisonment or a fine or both.

**38 Is it possible to redomicile an overseas vehicle in your jurisdiction?**

The process for company redomiciliation is laid out in the Companies Law, and can be achieved for funds that are, or that will need to be, regulated by CIMA.

**39 Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?**

Provided foreign investors meet the necessary anti-money laundering requirements of the fund, there are no restrictions on their ability to invest in funds established or managed in the Cayman Islands other than those imposed by the fund itself or by securities laws and other restrictions that may be applicable to investors in their jurisdiction of residence or establishment.

**HARNEYS****Daniella Skotnicki****[daniella.skotnicki@harneys.com](mailto:daniella.skotnicki@harneys.com)**

Harbour Place  
103 South Church Street  
George Town  
Cayman Islands

Tel: +1 345 949 8599  
[www.harneys.com](http://www.harneys.com)

## *Getting the Deal Through*

Acquisition Finance  
Advertising & Marketing  
Agribusiness  
Air Transport  
Anti-Corruption Regulation  
Anti-Money Laundering  
Appeals  
Arbitration  
Art Law  
Asset Recovery  
Automotive  
Aviation Finance & Leasing  
Aviation Liability  
Banking Regulation  
Cartel Regulation  
Class Actions  
Cloud Computing  
Commercial Contracts  
Competition Compliance  
Complex Commercial Litigation  
Construction  
Copyright  
Corporate Governance  
Corporate Immigration  
Corporate Reorganisations  
Cybersecurity  
Data Protection & Privacy  
Debt Capital Markets  
Dispute Resolution  
Distribution & Agency  
Domains & Domain Names  
Dominance  
e-Commerce  
Electricity Regulation  
Energy Disputes  
Enforcement of Foreign Judgments  
Environment & Climate Regulation  
Equity Derivatives  
Executive Compensation & Employee Benefits  
Financial Services Compliance  
Financial Services Litigation  
Fintech  
Foreign Investment Review  
Franchise  
Fund Management  
Gas Regulation  
Government Investigations  
Government Relations  
Healthcare Enforcement & Litigation  
High-Yield Debt  
Initial Public Offerings  
Insurance & Reinsurance  
Insurance Litigation  
Intellectual Property & Antitrust  
Investment Treaty Arbitration  
Islamic Finance & Markets  
Joint Ventures  
Labour & Employment  
Legal Privilege & Professional Secrecy  
Licensing  
Life Sciences  
Loans & Secured Financing  
Mediation  
Merger Control  
Mining  
Oil Regulation  
Outsourcing  
Patents  
Pensions & Retirement Plans  
Pharmaceutical Antitrust  
Ports & Terminals  
Private Antitrust Litigation  
Private Banking & Wealth Management  
Private Client  
Private Equity  
Private M&A  
Product Liability  
Product Recall  
Project Finance  
Public M&A  
Public-Private Partnerships  
Public Procurement  
Real Estate  
Real Estate M&A  
Renewable Energy  
Restructuring & Insolvency  
Right of Publicity  
Risk & Compliance Management  
Securities Finance  
Securities Litigation  
Shareholder Activism & Engagement  
Ship Finance  
Shipbuilding  
Shipping  
State Aid  
Structured Finance & Securitisation  
Tax Controversy  
Tax on Inbound Investment  
Telecoms & Media  
Trade & Customs  
Trademarks  
Transfer Pricing  
Vertical Agreements

*Also available digitally*

# Online

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