Cayman Islands open-ended funds

Insights - 22/05/2023

This client briefing provides an overview of the process of and legal considerations connected with establishing and operating an open-ended fund in the Cayman Islands.

This briefing is intended to provide a general summary of the position in law as at the date of publication shown above, and is not to be taken as specific legal advice applicable to particular issues or circumstances. If such advice is required, please contact your usual Ogier contact or one of our investment fund specialists as detailed on this page.

1. Formation, structure and statutory requirements

The most common form of entities used for Cayman open-ended fund structures are exempted companies, exempted limited partnerships (**ELPs**) and limited liability companies. For detailed guidance on the establishment and ongoing obligations for such entities, please see our briefing notes: Cayman Islands Exempted Companies, Cayman Islands Exempted Limited Partnerships and Cayman Islands Limited Liability Companies.

Investment funds may be configured in different arrangements, with the appropriate structure generally driven by the tax treatment and geographical location of the prospective investors and the fund's portfolio; the location of the manager; the asset classes and diversification of the portfolio; and investor and sponsor familiarity.

Typical structures involving Cayman vehicles are (i) a stand-alone fund, whereby all investor monies are pooled in a single vehicle which makes direct investments, (ii) a side-by-side arrangement, whereby a Cayman stand-alone fund operates in parallel to an onshore stand-alone vehicle with an identical investment strategy (but a different investor base) and the two vehicles execute the same trades, and (iii) a master-feeder structure. The typical master-feeder structure involves US tax-exempt investors and non-US investors investing in a Cayman exempted company feeder fund, US taxable investors investing in a Delaware limited partnership feeder fund, and the two feeder funds investing together into a single master fund

(typically a Cayman exempted company or a Cayman ELP), with the master fund holding the underlying portfolio investments.

Many variations are possible and it is important that fund sponsors take advice from onshore tax and regulatory experts to settle on the optimum structure.

2. Mutual Funds Act (Revised)

The Mutual Funds Act (Revised) (**MF Act**) is the principal Cayman Islands legislation applicable to open-ended investment funds. The MF Act refers to 'mutual funds', being 'a company, unit trust or partnership that issues equity interests, the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and enabling investors in the mutual fund to receive profits or gains from the acquisition, holding, management or disposal of investments...'.

'Equity interest' is further defined to include a share, trust unit, partnership interest or any other representation of an interest which is "redeemable or repurchasable at the option of the investor". As such, the MF Act applies only to open-ended funds, since interests in closed-ended funds are not redeemable at the option of the investor. Closed-ended funds may fall within the definition of a 'private fund' under the Private Funds Act (Revised) and if so will be subject to regulation by that law. See our client briefing: Cayman Islands Closed-Ended Funds for guidance on Cayman closed-ended funds. The definition of an 'equity interest' expressly excludes debt and so a vehicle that only issues debt is not deemed to be issuing investment interests and so does not fall within the scope of the MF Act.

The MF Act requires that 'mutual funds' falling within the above definition be registered or licensed with the Cayman Islands Monetary Authority (**CIMA**) under the MF Act in order to carry on business in or from the Cayman Islands. A vehicle with a single investor (which investor is not a mutual fund registered with CIMA) is not a mutual fund, on the basis that there is no 'pooling' of investor funds.

Master funds are treated as registrable mutual funds if:

- they fall within the definition of a master fund in the MF Act, being an entity that (i) is established or incorporated in Cayman, (ii) issues equity interests to one or more investors, (iii) holds investments and conducts trading activities for the principal purpose of implementing the overall investment strategy of one or more regulated feeder funds; and (iv) has one or more regulated feeder funds either directly or through an intermediary entity established to invest in the master fund. A feeder fund is defined as a mutual fund that conducts more than 51% of its investing in a master fund either directly or through an intermediary entity; or
- they otherwise fall within the definition of a mutual fund in the MF Act, for example a

Cayman 'master fund' in a mini-master structure where the only feeder fund is a Delaware limited partnership but the master fund also takes in investors directly

There are four categories of registrable mutual funds:

- a fund registered under section 4(3) of the MF Act (**s4(3) fund**): this is by far the most common form of mutual fund. The principal requirement is that the minimum initial investment purchasable by a prospective investor is at least US$100,000. It is currently the case that master funds are generally registered under Section 4(3) of the MF Act
- a fund registered under section 4(4) of the MF Act (**limited investor fund**): this is a mutual fund with fifteen or fewer investors, a majority of whom are capable of appointing or removing the operators (being a director, general partner or trustee (as applicable)) of the mutual fund. A limited investor fund is not subject to the minimum initial investment requirement of a s4(3) fund nor is a full offering document required to be filed with CIMA; instead a copy of the relevant marketing materials or a summary of terms may be filed. Master funds are generally prohibited from registering as limited investor funds, notwithstanding that they would typically have considerably fewer than fifteen feeder funds
- an administered fund: this requires a licensed mutual fund administrator in Cayman to agree to provide the fund's principal office. The licensed administrator is subject to various on-going obligations and duties pursuant to the MF Act, including reporting to CIMA if it has reason to believe that the fund is acting in breach of the MF Act or may be insolvent or is otherwise acting in a manner prejudicial to its creditors or investors. The primary advantage is that the US$100,000 minimum initial investment requirement which applies to a s4(3) fund does not apply to administered funds. However, the additional role and responsibilities of the administrator may increase administration fees and limit choice
- a licensed fund: this is designed to be suitable for retail funds and as such involves a more prescriptive and iterative process with the regulator

The remainder of this briefing note focuses on s4(3) funds, limited investor funds and administered funds, referred to for convenience as registrable funds.

3. Registration requirements

Requirement to maintain and file current offering document

Under the MF Act, a regulated mutual fund (other than limited investor fund or a regulated master fund) must not carry on or attempt to carry on business in or from the Cayman Islands unless, among other requirements, there is filed with CIMA a current offering document which:

- describes the equity interests which are being offered in all material respects

- contains such other information as is necessary to enable a prospective investor in the mutual fund to make an informed decision as to whether or not to subscribe for or purchase the equity interests
- complies with CIMA's Rule on the Contents of Offering Documents – Regulated Mutual Funds

Documents to be filed

An application for registration as a regulated mutual fund must be submitted electronically on CIMA's regulatory enhanced electronic forms submission (**REEFS**) secure portal and must be accompanied by the following:

- a completed prescribed application form
- for s4(3) funds, a copy of the offering document (as referred to above) and for limited investor funds, a copy of the offering document (if any), marketing materials and/or a summary of the fund's terms
- for a limited investor fund only, a certified copy of an extract of the constitutional documents of the limited investor fund specifying that a majority of the investors in number are capable of appointing or removing the operator of the limited investor fund
- auditor's consent letter
- administrator's consent letter
- prescribed details relating to the fund's anti-money laundering officers (see 'Anti-money laundering legislation' below)
- Certificate of Incorporation/Registration

Timing

It generally takes approximately two weeks from the date the application is submitted for the fund to be recorded on CIMA's website as a registered mutual fund and to receive a copy of the Certificate of Registration. It is not permissible to take in money, issue shares or commence trading before the fund is CIMA registered. However, the Certificate of Registration issued by CIMA will be dated with the date of submission of the registration documents. On this basis, and as a result of CIMA's consistency of approach in registering funds, most funds are confident to commence operations after the date of registration but before the Certificate of Registration has been received. Although this carries with it the risk that CIMA will reject or delay the registration of the fund for some reason, in our experience this would be very unusual.

From a Cayman law perspective it is permissible for the offering document to be used for marketing purposes ahead of CIMA registration, although if the offering document states that the fund is registered with and regulated by CIMA then it should be notified to recipients of the

document that such registration and regulation is pending.

Fees

Mutual funds will be required to submit a registration fee of US$366 to CIMA and are subject to an initial and annual CIMA registration fee of US$4,268.

4. Operating requirements

The MF Act seeks to ensure that there is transparency and proper documentation of a mutual fund's core operations and processes. The MF Act achieves this though audit, valuation and segregation requirements set out in the MF Act and in Rules and Guidance issued by CIMA. The fund's policies and procedures should be reviewed on a periodic basis to ensure continued compliance.

The applicable operating requirements may be summarised as follows:

Audit – audited financial statements, signed off by a CIMA-approved Cayman Islands auditor, must be submitted to CIMA within six months of a mutual fund's financial year end, although CIMA may allow limited extensions (up to a maximum of an additional three months) in certain circumstances. Accounts are filed electronically through CIMA's REEFs portal, supported by a Fund Annual Return (**FAR**) which provides CIMA with certain details regarding the mutual fund on an annual basis.

Valuation – CIMA's Rule on Calculation of Asset Values – Regulated Mutual Funds (**NAV Rules**) requires mutual funds to establish, implement and maintain a NAV Calculation Policy (as defined in the NAV Rules) that ensures a mutual fund's net asset value (**NAV**) is fair, reliable, complete, neutral and free from material error and is verifiable. Such policy must be calculated in accordance with the International Financial Reporting Standards or Generally Accepted Accounting Principles of the United States of America, Japan or Switzerland or a non-high risk jurisdiction (being any jurisdiction that is not on the list of high risk jurisdictions issued by the Financial Action Task Force).

The NAV Calculation Policy must:

- be written and disclosed in the fund's offering document
- describe the fund's practical and workable pricing and valuation policies, practices, and procedures
- require the calculation of the fund's NAV regularly, at least quarterly
- state when NAV will be calculated, how it will be used, and when and how it will be published
- state the accounting principles or reporting standards that will be followed

- define the role and responsibilities of the fund's service providers in the valuation process
- identify the price sources for each instrument type and a practical escalation of resolution procedure for the management of exceptions
- incorporate internal controls that are appropriate to the size, complexity, and nature of the Fund's operations

The NAV must generally be calculated by a service provider that is independent of a fund's investment manager, advisor or operator. Where any such manager, adviser or operator will calculate or assist in the calculation of NAV (including, for example, through management overrides), this must be explicitly detailed in the offering document, together with an explanation as to why another service provider could not make the relevant calculations. In such circumstances, the manager, adviser or operator must also provide supporting information regarding the determination of prices to the service provider who is usually charged with the calculation of NAV (typically the administrator) and that service provider must take reasonable steps to verify the facts upon which prices are based and the appropriateness of such prices to the extent reasonably possible. Any deviations from the NAV Calculation Policy must be disclosed to investors and agreed by the operators of the fund in advance of the determination or production of NAV. The fund's operators have ultimate responsibility for oversight of the entire valuation process, and must approve and review at least annually, the NAV Calculation Policy.

Segregation of Assets - CIMA's Rule on Segregation of Assets – Regulated Mutual Funds (**Segregation Rules**) requires that mutual funds must establish, implement and maintain (or oversee the establishment, implementation and maintenance of) strategies, policies, controls and procedures to ensure compliance with the Segregation Rules consistent with the mutual fund's offering document and appropriate for the size, complexity and nature of the mutual fund's activities and investors. The Segregation Rules state that all financial assets and liabilities of a mutual fund and any part thereof (including investor funds and investments) (**Portfolio**) must be accounted for separately from any assets of the manager, operator or custodian of the mutual fund. The Segregation Rules also provide that the overriding requirement of the Segregations Rules is that a mutual fund must ensure that no manager, operator or custodian of the fund uses the Portfolio to finance its own or any other operations.

The Segregation Rules state that the transfer and reuse of assets by a custodian, as consented to by or on behalf of the mutual fund (e.g. re-hypothecation), is not prohibited, provided that a description of the arrangements entered into with any custodian allowing for the possibility of such transfer and reuse (and the maximum level of such transfer and reuse) is disclosed in the offering documents or otherwise disclosed to investors before they invest, and that any material changes thereto are also disclosed to investors.

In a formal notice, CIMA has clarified that the Segregation Rules do not prohibit prime

brokerage/custody arrangements that allow, in accordance with established and accepted industry practice, a custodian/sub-custodian to hold all client assets in a commingled client omnibus account along with the assets of other clients.

The Segregation Rules also require the operators of a regulated mutual fund ensure that verification, based on information provided by the fund and available external information, that the fund holds title to fund assets and maintenance of a record of those fund assets, is carried out by the fund's administrator or auditor (or other independent third party) or by the fund's manager or operator (or their affiliates) subject to the function being carried out independently from the portfolio management function and any conflicts being properly identified, managed and disclosed to investors of the fund.

All operating conditions and procedures need to be appropriate and proportionate given the scale and operations of a mutual fund. Where independent third parties are not engaged to carry out the above functions, CIMA may require that third party verification be undertaken. The MF Act provides that CIMA's supervision and monitoring of mutual funds, including the above operating conditions, is risk-based.

5. Corporate governance

CIMA requires a minimum of two directors for regulated mutual funds that are companies or managers for LLCs, and will require a minimum of two natural persons to be named in respect of a general partner or corporate director of a regulated mutual fund. There are no residency, shareholding or qualification requirements in relation to directors of Cayman companies, or managers of LLCs, or the general partners of ELPs, except (in the case of registrable corporate funds) for registration under the DRL Act (as referred to below).

There is no Cayman requirement for an investment fund to have any director or shareholder or general partner meetings in the Cayman Islands. Registrable funds are expected to have at least one board meeting a year.

Corporate Governance for Operators of an open-ended fund

CIMA issued new and updated regulatory measures in April 2023, including a new Statement of Guidance on Corporate Governance – Mutual Funds and Private Funds (**Corporate Governance SOG**) which came into effect on 14 April 2023, a new Rule on Corporate Governance for Regulated Entities (**Corporate Governance Rule**, which should be read in conjunction with the Corporate Governance SOG) and a new Rule and Statement of Guidance – Internal Controls for Regulated Entities (**Internal Controls Rule and SOG** and together with the Corporate Governance Rule, the **New Regulatory Measures**). The New Regulatory Measures come into effect on 14 October 2023.

The Corporate Governance SOG applies to all regulated mutual (and private) funds and is intended to provide the Operators of a regulated mutual (and private) fund with guidance on the minimum expectations for the sound and prudent governance of the regulated mutual (and private) funds that they operate and is not intended to be prescriptive or exhaustive. The **Operators** of a regulated mutual (and private) fund are considered to be its governing body meaning, the board of directors of a fund incorporated as a company, the general partner(s) of a fund formed as an exempted limited partnership, the manager (or equivalent) of a fund incorporated as a limited liability company or the trustee(s) in the case of a unit trust.

The New Regulatory Measures apply to all regulated entities in the Cayman Islands, including regulated mutual funds.

CIMA has expressly recognised that the application of the Corporate Governance SOG, the Corporate Governance Rule and the Internal Controls Rule and SOG should be appropriate for, and proportionate to, the size, complexity, structure, nature of business and risk profile of the regulated fund's operations.

By way of high level summary, the Corporate Governance SOG provides guidance on seven core elements of corporate governance: the oversight function of the Operators, conflicts of interest, Operator meetings, duties of Operators, documentation, relations with CIMA and risk management. Please see our client briefing Enhancement of Cayman's corporate governance framework for regulated funds for an overview of the core elements of the Corporate Governance SOG.

Similarly, the Corporate Governance Rule requires all regulated entities, including regulated mutual funds, to establish, implement and maintain a corporate governance framework which must address, at a minimum: its objectives and strategies; structure and governance of the governing body; appropriate allocation of oversight and management responsibilities; independence and objectivity; collective duties of the governing body; duties of individual directors of the governing body; appointments and delegation of functions and responsibilities; risk management and internal control systems; conflicts of interest and code of conduct; remuneration policy and practices; reliable and transparent financial reporting; transparency of communications; duties of senior management; and relations with CIMA.

The Internal Controls Rule and SOG is comprised of two parts, Part I sets out the general rules and guidelines for all regulated entities covering each of the five components of internal control, namely: control environment; risk identification and assessment; control activities and segregation of duties; information and communications; and monitoring activities and correcting deficiencies in internal controls and Part II provides sector specific rules and guidelines (which is not specific to regulated investment funds).

From these sources, we would highlight that (amongst other matters) the governing body

should constitute an appropriate number of individual(s) as required by applicable acts and regulations in the Cayman Islands with a diversity of skills, background, experience and expertise to ensure that there is an overall adequate level of competence at the operator level. The Operators must exercise independent judgment, always acting in the best interests of the fund (other than where lawfully permitted or required to consider other interests) and, taking into consideration the interests of the investors as a whole. Operators are required to act honestly and in good faith at all times. In addition, Operators must operate with due skill, care and diligence and should ensure they have sufficient and relevant knowledge and experience to carry out their duties. The Operators must ensure that the fund's investment strategy is clearly described in the constitutional documents or offering documents of the fund. The Operators must regularly monitor whether the investment manager is performing in accordance with the defined investment criteria, investment strategy and restrictions. The Operators are responsible for approving the appointment and removal of service providers. The Operators should review all material service provider contracts to ensure roles and responsibilities are clearly defined and that the responsibilities are clearly divided between each service provider. The Operators should also ensure thorough understanding of the scope and nature of the responsibilities of each service provider and ensure that the roles and responsibilities of such providers are clearly set out. They should ensure that the terms of the fund's contracts with its service providers are consistent with industry standard. They must also regularly verify or seek confirmation from service providers that they are acting in accordance with the fund's constitutional and offering documents. The Operators should communicate adequate information to the fund's investors, including any material changes to the fund. In addition, Operators should communicate and evidence communication of material changes relating to investor rights to the investors of the regulated fund at the time the changes are being made or on an ongoing basis. The Operators should as necessary, and at all material times, inform themselves of the fund's investment activities, performance and financial position, including conducting inquisitorial reviews of the fund's financial results and audited financial statements and monitoring the fund's net asset valuation policy and the calculation of its net asset value. The Operators of a regulated fund have ultimate responsibility for overseeing and supervising the affairs of the fund. However, subject to the considerations set out above, the Operators may delegate certain duties to service providers. The Operators should require regular reporting from the fund's investment manager and other service providers in order to enable it to make informed decisions and to adequately oversee and supervise the operations of the regulated fund. The Operators must monitor compliance with relevant acts, regulations, rules and standards and establish periodic verification of adherence with compliance standards.

The Operators of a regulated mutual fund should convene at least once per year, or more frequently where the circumstances of size, complexity, structure, nature of business and risk profile or size, nature and complexity of the fund's operations require. Operator meetings provide an opportunity for the Operators to (amongst other matters) review and assess the fund's investment activities, performance and financial position, to engage with the fund's

service providers (as part of the ongoing requirement to monitor and supervise delegated functions, which the Operators retain ultimate responsibility for). Operator meetings are not required to take place in the Cayman Islands nor are they required to take place in person. The Operators should fully, accurately and clearly record in writing all meetings and any material decisions and/or considerations and an agenda should be circulated in advance of each meeting to allow the Operators to appraise themselves of the matters to be considered.

The Operators of a regulated fund must suitably identify, disclose, monitor and manage all its conflicts of interest. The Operators should implement a documented conflicts of interest policy (which may be contained within the body of the regulated mutual fund's constitutional documents or offering documents) which requires disclosure of conflicts on at least an annual basis or at any time where a conflict could be relevant.

Additionally, with respect to an open-ended fund formed as a company, directors owe duties at common law (including fiduciary duties); statutory duties; and duties to third parties in contract or in tort. For guidance on these duties, please see our client briefing Acting as a director of a Cayman Islands company.

Common law and statutory liability arising from offering of shares

A corporate investment fund, whether or not it is a mutual fund within the meaning of the MF Act, as well as potentially its directors, may also incur civil liability as a result of the offering of the fund's shares. Liability may arise in respect of all or any of the following:

- misrepresentation, where shares are subscribed for in reliance upon an offering document containing a misrepresentation (whether innocent, negligent or fraudulent)
- negligent misstatement, if the plaintiff can establish that the defendant owed him a 'duty of care' not to cause loss or damage of the kind caused by breach of that duty
- breach of contract. In principle, a statement in a prospectus may become incorporated as a term of the contract of allotment between the company and a subscriber or, in the case of an issue of securities by way of an offer for sale, in the contract of purchase between the issuing house and the purchaser of the securities. Breach of any such term would result in a claim for damages for breach of contract. The contractual measure of damages is that necessary to put the innocent party in the economic position expected from due performance of the contract. When it is either not possible or not desirable to compensate the innocent party in that way, a court may award damages designed to restore that party to the economic position occupied at the time the contract was entered into while avoiding either party being unjustly enriched

The above deals with the position under Cayman Islands law. It may be more likely, in fact, that claims relating to a false representation or negligent misstatement are dealt with under the laws of, and before the courts of, the jurisdiction in which the misrepresentation or inaccurate

statement was made. With regard to contractual claims, it is likely that any claim would be determined in accordance with the governing law of the relevant contract. In the case of the subscription agreement, this is usually, explicitly or by implication, the law of the Cayman Islands.

Criminal liability may also arise where a person, by any deception, dishonestly obtains for himself or herself or for another any pecuniary advantage or dishonestly obtains property belonging to another, with the intention of permanently depriving the other of it; and where an officer of a company, with intent to deceive members or creditors of the company about its affairs, publishes or concurs in publishing a written statement or account which to his or her knowledge is or may be misleading, false or deceptive in a material particular.

6. Directors Registration and Licensing Act

Registrable corporate mutual funds are 'covered entities' for the purposes of the Directors Registration and Licensing Act (Revised) (**DRL Act**). Every director of a covered entity must be a corporate director, a professional director or a registered director under the DRL Act. The most common are registered directors, being natural persons appointed as directors for fewer than 20 covered entities. Managers of Cayman limited liability companies are deemed to be directors for the purposes of the DRL Act.

Funds that are ELPs or are not registered with CIMA are not covered entities for the purposes of the DRL Act and individuals do not need to register under the DRL Act in order to serve as directors of such funds or their general partners.

7. Ongoing obligations

Obligations under the MF Act

The MF Act imposes on regulated mutual funds the following continuing obligations:

- to file with CIMA a copy of material amendments to its current offering document/summary of terms/marketing materials or prescribed details filed with CIMA and/or any changes to its registered office or principal office within 21 days
- to have its accounts audited annually by a Cayman Islands auditor approved by CIMA (unless CIMA grants an exemption whether absolute or conditional) and to file those accounts with CIMA within six months of the end of the regulated mutual fund's financial year
- to comply with the valuation, segregation, disclosure and other requirements set out in the MF Act and in Rules and Guidance issued by CIMA
- to comply with the AML Regulations (see below)

- to maintain a minimum of two directors for corporate regulated mutual funds and a minimum of two natural persons in respect of a general partner or corporate director of a regulated mutual fund
- to file a FAR with CIMA. The FAR is usually submitted electronically by the auditor through CIMA's REEFS portal and includes general information about the fund, operational information such as the nature of the investments held as well as financial information about the fund
- to pay the prescribed annual registration fee to CIMA on or before 15 January in each year, failing which a penalty equal to one-twelfth of the annual fee is charged for each month or part-month of default
- to maintain certain records and books of account

Other statutory obligations

For a detailed description of other statutory obligations for Cayman entities, including maintenance of statutory registers, changes to prescribed particulars and/or constitutive documents filed with the General Registry, corporate governance, obligations and liabilities please see the relevant Ogier client briefings: Cayman Islands Exempted Companies, Cayman Islands Exempted Limited Partnerships and Cayman Islands Limited Liability Companies.

8. Obligations under anti-money laundering legislation

The Proceeds of Crime Act (Revised) (**PCA**), the Proliferation Financing (Prohibition) Act (Revised) and the Anti-Money Laundering Regulations (**AML Regulations**) and the Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands issued by CIMA together comprise the anti-money laundering regime of the Cayman Islands (**AML Regime**). Generally, whether regulated or not, Cayman investment funds, will all fall within scope of the Cayman Island's AML Regime as they will be considered to be engaged in 'relevant financial business' as defined under the PCA.

The AML Regime requires that a mutual fund must maintain the following in accordance with the AML Regime:

- investor identification and verification
- adoption of a risk-based approach to monitor investors and financial activities including adequate systems to identify risk in relation to persons, countries and activities, including screening against all applicable sanctions lists
- record-keeping procedures

- risk-management procedures concerning the conditions under which an investor may invest prior to verification
- observance of the list of sanctioned countries, published by any competent authority, do not sufficiently comply with the recommendations of the Financial Action Task Force
- suspicious activity reporting procedures
- procedures to monitor and ensure compliance with the AML Regime
- procedures in place to test the anti-money laundering and countering terrorist financing and proliferation financing systems in place
- such other procedures of internal control, including an appropriate effective risk-based independent audit function and communication as may be appropriate for the ongoing monitoring of business relationships or one-off transactions for the purpose of forestalling and preventing money laundering, terrorist financing and proliferation financing

In addition, mutual funds must appoint named individuals to the roles of anti-money compliance officer (**AMLCO**), money laundering reporting officer (**MLRO**) and deputy money laundering reporting officer (**DMLRO**); the AMLCO and MLRO (or DMLRO) may be the same individual, but the same person cannot serve as both MLRO and DMLRO. The AMLCO will be responsible for overseeing the effectiveness of the mutual fund's AML systems, compliance with applicable AML legislation and guidance and the day-to-day operation of the AML policies and procedures. The MLRO/DMLRO must receive all reports of suspicious activity in relation to any aspect of the mutual fund and its activity; the MLRO/DMLRO should determine whether the information contained in any report supports the suspicion reported in order to determine whether, in all the circumstances, he/she in turn should submit a suspicious activity report to the Financial Reporting Authority of the Cayman Islands.

9. Obligations under FATCA and CRS

Almost every Cayman mutual fund will be a Reporting Cayman Islands Financial Institution for the purposes of the US Foreign Account Tax Compliance Act (**FATCA**) and the Common Reporting Standard issued by the OECD (**CRS**).

As a result, a mutual fund will be required to:

- register with the US Internal Revenue Service in order to obtain a GIIN (a Global Intermediary Identification Number) and, accordingly, give one or more individuals authority to complete such registration. Typically the fund will authorise the manager to do this on the fund's behalf following incorporation of the fund
- conduct requisite due diligence on all of its investors in order to identify the tax residency of each investor and to determine whether the interest held by that investor constitutes a

'reportable account' under the regulations issued in respect of FATCA and CRS. Generally, mutual funds address this by (i) seeking appropriate self-certifications and beneficial ownership information from investors at the time of investment, and (ii) engaging the fund administrator or another specialist provider to assist with the fund's FATCA and CRS due diligence and reporting obligations

- provide notification to the Cayman Islands Tax Information Authority (**TIA**) of certain prescribed details, and to identify a Principal Point of Contact and a Change Notice Person. This notification is generally required to be made by 30 April in the year following registration of the mutual fund
- report the requisite information on each of its 'reportable accounts' to the TIA prior to the applicable deadlines. Reporting periods are generally calendar years, with the reports themselves generally due on or before 31 July in the year following the relevant reporting year
- maintain written compliance policies and procedures in connection with the fund's compliance with its FATCA and CRS obligations (even where the fund has delegated performance of its FATCA and CRS obligations to a third party service provider and, in respect of the delegated services, is relying on the policies and procedures of that service providers)
- in the case of CRS, file a CRS Compliance Form containing certain prescribed information by 15 September in each year (unless extended by the TIA, for example to 15 September 2024 in the case of filings which would generally have been due in 2023)

10. Obligations under data protection legislation

The Cayman Islands Data Protection Act (Revised) (**DP Act**) provides a framework of rights and duties to regulate the processing of individuals' personal data broadly based on the same internationally recognised privacy principles that form the basis for other data protection laws globally. Under the DP Act, an entity established in the Cayman Islands that handles any individual's personal information has certain obligations with respect to that information and must ensure that such individual is formally apprised of by whom, and for what purpose, any of their personal data is being used.

A mutual fund will therefore be responsible for complying with the requirements of the DP Act and the data protection principles in respect of personal data processed by the fund or on behalf of the fund by any third party processors such as its administrator and other service providers. The fund must ensure that investors are provided with an appropriate privacy notice and that contracts with service providers that process personal data on behalf of the fund comply with the DP Act.

11. Obligations under economic substance legislation

Regulated mutual funds will be regarded as 'investment funds' for the purposes of the International Tax Co-operation (Economic Substance) Act (Revised) (**ES Act**) and are therefore excluded from the definition of 'relevant entity' under the ES Act and out-of-scope of such law. However, all Cayman Islands mutual funds must make an annual notification filing to confirm such exempt status.

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Regulatory information can be found under Legal Notice

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