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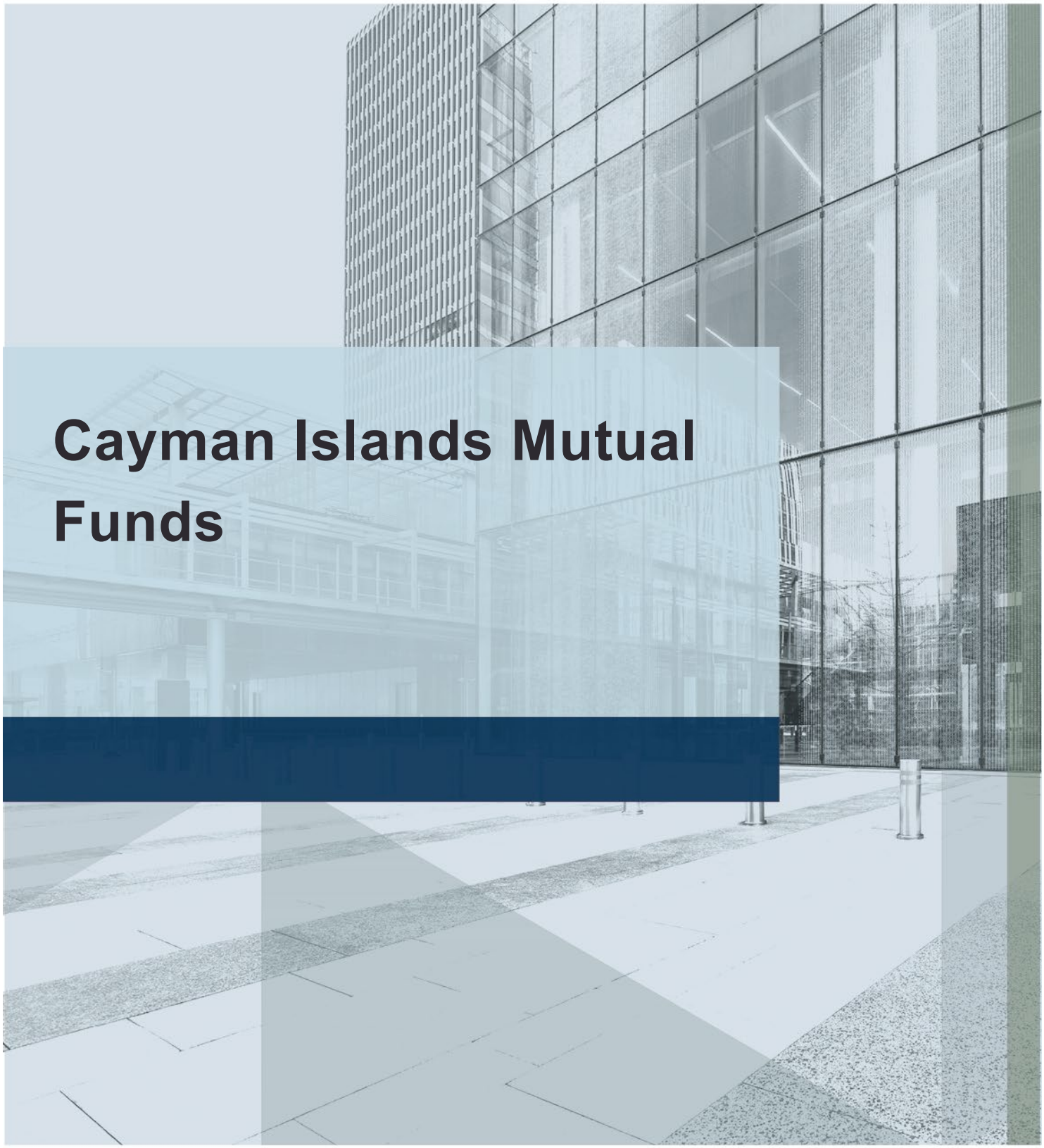

Cayman Islands Mutual Funds

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Preface

This publication has been prepared for the assistance of those who are considering the formation of a mutual fund in the Cayman Islands. It deals in broad terms with the requirements of Cayman Islands law for the establishment and operation of such entities. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients seek legal advice in the Cayman Islands on their specific proposals before taking steps to implement them.

Before proceeding with the incorporation of a company or the formation of a unit trust or the establishment of a partnership in the Cayman Islands, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

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1. INTRODUCTION: MUTUAL FUNDS IN CAYMAN

The Cayman Islands is a well-established base for investment funds with many of its funds quoted on stock exchanges such as the London Stock Exchange and the Hong Kong Stock Exchange. The governing legislation is the Mutual Funds Act (as amended) (the "**Act**") and the regulations promulgated thereunder. Whilst both the Act and this memorandum make specific reference to the term "mutual funds," as a practical matter, this term encompasses various types of investment funds, including hedge funds.

The Cayman Islands Monetary Authority ("**CIMA**") is responsible for the regulation of mutual funds pursuant to the Act.

2. DEFINITION

A mutual fund is defined under the Act as a "company, unit trust or a 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."

It should be noted in this context that:

- "company" also includes foreign companies, "unit trust" includes foreign unit trusts and "partnership" includes foreign partnerships, general or limited, but excludes general partnerships constituted under Cayman Islands law;
- to be considered an "equity interest", a share, unit, partnership interest or any other representation of an interest must be redeemable or repurchasable at the option of the investor and, as such, closed-end funds are excluded from the definition. Closed-ended funds are instead regulated under the Private Funds Act (2021 Revision);
- "equity interest" excludes debt and therefore a fund which only issues debt instruments would not be regarded as a mutual fund for these purposes;
- there is no statutory definition of "investments";
- "promoter" is defined as any person whether within or without the Cayman Islands who causes the preparation or distribution of an offering document in respect of the mutual fund or proposed mutual fund but does not include a professional adviser acting for or on behalf of such a person; and
- "operator" means, in the case of a unit trust, the trustee of that trust; in the case of a partnership, the general partner in that partnership; or in the case of a company, a director of that company.

A mutual fund must not carry on or attempt to carry on business in or from the Cayman Islands without a licence unless: (a) it is an unregulated mutual fund, or (b) it falls within the exemptions for a licence under the regulated mutual fund provisions of the Act.

"To carry on or attempt to carry on business in or from the Cayman Islands" means that the mutual fund is incorporated or established in the Cayman Islands or, regardless of where it is incorporated or established, a mutual fund ("**Foreign Fund**") which makes an invitation to the public in the Cayman Islands to subscribe for its equity interests.

An invitation to any the following persons will not constitute an invitation to the public in the Cayman Islands:

(a) sophisticated persons;

(b) high net worth persons;

(c) the Cayman Islands Stock Exchange, CIMA, the Cayman Islands Government or any public authority created by the Cayman Islands Government;

(d) exempted or ordinary non-resident companies registered under the Companies Act;

(e) foreign Companies registered under Part IX of the Companies Act;

(f) a limited liability company registered under the Limited Liability Companies Act;

(g) any company listed in (d), (e) or (f) above that acts as general partner to a partnership registered under section 9(1) of the Exempted Limited Partnership Act;

(h) any director or officer of the entities listed in (d),(e), (f) or (g) above acting in such capacity;

(i) a limited liability partnership registered under the Limited Liability Partnership Act; or

(j) the trustee of any trust capable of registration under section 74 of the Trusts Act acting in such capacity.

Further, Foreign Funds will not need to be registered in the Cayman Islands in the event that they are making an offer of equity interests to the public in the Cayman Islands where they do so by or through an entity licensed under the Securities Investment Business Act; and

(a) the equity interests are listed on a stock exchange approved by CIMA; or

(b) the Foreign Fund is regulated by an overseas regulatory authority approved by CIMA.

3. TYPES OF FUNDS

The Act divides mutual funds into the following main categories: licensed mutual funds, registered mutual funds (including "master" funds), administered mutual funds, limited investor mutual funds and EU connected funds (see 3.4 below).

3.1. Unregulated Mutual Funds

A fund is not regulated by the Act if either it is not a mutual fund within the statutory definition (see above) or it has no significant link with the Cayman Islands.

A mutual fund is deemed to have a significant link with the Cayman Islands if either:

(a) it is incorporated or established in the Cayman Islands; or

(b) it makes an invitation to the public in the Cayman Islands to subscribe for its equity interests (bearing in mind the limitations on the notion of making an invitation to the public in the Cayman Islands noted above).

3.2. "Private" or "Limited Investor" Mutual Funds

The term "private" or "limited investor" mutual fund is used to refer to a fund in which "the equity interests are held by not more than fifteen investors, a majority of whom are capable of appointing or removing the operator of the fund".

An "investor" for this purpose is defined as "the legal holder of record or legal holder of a bearer instrument representing an equity interest in the mutual fund" but does not include a "promoter" or "operator".

Historically, such funds could conduct business without registering or obtaining a licence under the Act, without appointing a licensed mutual fund administrator and without filing any papers with CIMA. However, the Mutual Funds (Amendment) Act, 2020 removed this exemption. Accordingly, all such limited investor funds are required to register in the same way as regulated mutual funds.

3.3. Regulated Mutual Funds

(a) **Generally**

A mutual fund which falls within the statutory definition or has a significant link with the Cayman Islands is subject to full regulation under the Act.

The three different ways in which a regulated mutual fund may qualify to conduct business are as follows:

- **Licensed Funds**: A mutual fund may qualify to conduct business by obtaining a licence from CIMA pursuant to the provisions of the Act and having a registered office in the Cayman Islands (or if a unit trust - the trustee is appropriately licensed). Special conditions to the mutual fund licence may be imposed. (For more information on licences please contact Conyers directly).

- **Administered Funds**: A mutual fund may qualify to conduct business by employing a licensed mutual fund administrator to provide the fund's principal office in the Cayman Islands and complying with other requirements applicable to all regulated mutual funds (see below). It should be noted that a licensed mutual fund administrator must comply with certain obligations and duties pursuant to Part 3 of the Act.

- **Registered Funds**: A mutual fund may qualify to conduct business by simply registering as such with CIMA on the basis that:

(i) the minimum initial investment per investor in the fund is at least US$100,000 (CI$82,000) or the equivalent;

(ii) the shares, units or other interests in the fund are listed on a recognised stock exchange; or

(iii) the equity interests are held by not more than fifteen investors, a majority of whom are capable of appointing or removing the operator of the fund.

All regulated mutual funds, regardless of sub-category, are subject to the same requirements and regulatory powers which are described at section 3.3.(c) below.

(b) **Master Funds**

The master-feeder fund structure is popular for drawing in investment funds from different jurisdictions and consolidating them in one central investment platform. Particularly useful at adapting to country-specific regulations, master-feeders are flexible and efficient vehicles for raising financing for investment internationally.

Master funds have registration requirements and are subject to regulation under the Act.

A master fund is defined as "a company, partnership or unit trust that (a) is established or incorporated in Cayman; (b) issues equity interests to one or more investors; (c) holds investments and conducts trading activities for the principal purpose of implementing the overall investment strategy of the regulated feeder fund and (d) has one or more regulated feeder funds either directly or through an intermediary entity established to invest in the master fund." A regulated feeder fund is defined as "a regulated mutual fund that conducts more than 51% of its investing in a master fund either directly or through an intermediary entity".

Registration as a master fund will involve the filing of the fund's certificate of incorporation (or equivalent) and certain prescribed information as well as payment of a fee payable on initial registration and payable annually thereafter. A master fund is not required to have a separate offering document.

Master funds are also required to file audited accounts (with local auditor sign-off) with CIMA within six months of financial year end.

(c) **Requirements for Regulated Mutual Funds (including private/limited investor mutual funds)**

All regulated mutual funds are subject to the following requirements:

- **Offering Document**: a regulated mutual fund is required to file a copy of its offering document with CIMA before commencing business. This document must describe the shares, units or other interests on offer in all material respects and must contain sufficient information as is necessary to enable a prospective investor to make an informed decision as to whether or not to subscribe to or purchase the interests. An amended offering document must be prepared and a copy filed with CIMA within 21 days of any change that occurs which affects the

information in the offering document. **Private/limited investor mutual funds** are instead required to file a certified copy of an extract of the constitutional documents specifying that a majority of the investors in number are capable of appointing or removing the operator of the mutual fund.

- **Audit**: The Act requires an annual audit of the accounts of every regulated mutual fund by an auditor approved by CIMA. The audited accounts must be filed with CIMA within six months of the end of the fund's financial year, although CIMA may allow an extension of time. Technology has been implemented by CIMA which allows for audited accounts to be filed electronically. CIMA has the discretion to either absolutely or conditionally exempt a regulated mutual fund from filing audited accounts. This discretion will only be exercised where the mutual fund has a valid reason not to file audited accounts. CIMA has issued Regulatory Policies in relation to the Exemption from Audit Requirements and Local Audit Sign-Off for Mutual Funds and Mutual Fund Administrators.

- **Annual filing**: A regulated fund must file an annual report with CIMA. The annual return is usually submitted through the auditor 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.

- **Fee**: The annual fee must be paid on or before the 15th January of each year, failing which a penalty equal to one-twelfth of the annual fee is charged for each month or part-month of default. The penalty may be waived by the Financial Secretary for good cause.

(d) **Regulatory Powers**

The Act confers regulatory powers on CIMA, the Cabinet and the Court. Regulated mutual funds must comply with any orders or directions given in exercise of these powers. These powers are designed to enable both investigation and remedy including, if need be, reorganization or winding-up of the relevant fund. CIMA also has access to the Grand Court for orders to protect the interests of investors and creditors of the fund.

There is a right of appeal to the Executive Council against any decision of the Inspector. Hindrance of CIMA is an offence.

Certain principal regulatory powers conferred on CIMA by the Act in relation to mutual funds are briefly as follows:

- **Name of Fund**: CIMA may direct any mutual fund i.e. whether regulated, private or unregulated, to change its name if the existing name is regarded as confusing or misleading.

- **Special Audit**: CIMA may at any time direct a regulated mutual fund to have a special audit and to submit the audited accounts to CIMA within a specified period.

- **Provision of Information and Documents**: CIMA may direct any promoter or operator of a regulated mutual fund to provide information or an explanation concerning the fund and to

provide access to records relating to the fund. CIMA has similar powers to obtain information, an explanation and access to documents from mutual fund administrators.

- **Power to cancel or revoke a licence**: CIMA has the power to cancel the licence of, or de-register a mutual fund where it is satisfied of certain matters, including those listed below.
- **Miscellaneous Powers**: The Act gives CIMA extensive powers in relation to any regulated mutual fund or regulated EU connected fund which:

  (i) is or is likely to become unable to meet its obligations as they fall due; or

  (ii) is carrying on or attempting to carry on business or is winding-up its business voluntarily in a manner that is prejudicial to its investors or creditors; or

  (iii) has contravened any provision of the Act or the Anti-Money Laundering Regulations; or

  (iv) in the case of a licensed mutual fund, is carrying on or attempting to carry on business without complying with any condition of its mutual fund licence; or

  (v) has not been managed or directed in a fit and proper manner; or

  (vi) has as a director, manager or officer a person who is not fit and proper to hold the respective position.

CIMA has additional remedial powers with respect to mutual funds and mutual fund administrators, as well as general duties and powers to maintain a review of the mutual fund business in the Cayman Islands.

3.4. EU Connected Funds

Amendments to the Act and Securities Investment Business Act came into force on 1 January 2019 providing for an opt-in regime for funds and fund managers to be regulated consistent with the Alternative Investment Fund Managers Directive ("**AIFMD**"). The AIFMD consistent regimes for funds and managers are aimed at managers and funds looking to access European investors, whether using existing national private placement regimes or in contemplation of the granting to Cayman of an AIFMD passport at some future time.

An "EU Connected Fund" is a company, unit trust or partnership carrying on business in or from within Cayman which issues shares, units or partnership interests that carry an entitlement to participate in the profits or gains of the fund (whether open or closed-ended) the purpose of which is the pooling of investor funds which is either:

(a) managed by a person whose registered office is in a Member State (being either a member of the EU or a part of the EEA in which the AIFMD has been implemented) and whose regular business is managing one or more alternative investment funds; or

(b) marketed to investors or potential investors in a Member State,

in each case, as notified to CIMA as being identified to the relevant competent authority of a Member State in accordance with the relevant law implementing the AIFMD in the Member State.

EU Connected Funds will be required to submit certain particulars to CIMA[1] upon commencement of marketing in a country or territory within the EEA; they will be required to notify CIMA of any changes in particulars and upon cessation of marketing in all Member States of the EEA. They will also be required to provide annual written confirmation to CIMA that there has been no change to the particulars previously submitted.

EU Connected Funds may elect to apply for a licence or to be registered under the Act as an EU Connected Fund and this includes companies, unit trusts or partnerships that are already registered or licensed under the Act.

EU Connected Funds are able to request that CIMA provide attestations or confirmations of status from CIMA (where for example, required to be submitted to Member State regulators) upon submission of prescribed information and the applicable fee. CIMA will also be able to request information from or about the EU Connected Fund in order for CIMA to comply with its obligations in relation to a memorandum of understanding with respect to the AIFMD.

4. DIRECTORS REGISTRATION AND LICENSING

The Directors Registration and Licensing Act (the "**DRLA**") seeks to regulate directors of certain "covered entities" established in the Cayman Islands, including regulated mutual funds.

There are three classes of directors which are regulated under the DRLA: (1) registered directors who comprise natural persons appointed as directors to fewer than twenty covered entities; (2) professional directors who comprise natural persons appointed as directors for twenty or more covered entities and (3) corporate directors, comprising bodies corporate appointed as directors for any covered entity.

The DRLA applies to each category of director whether or not the director is resident in the Cayman Islands.

Fees are payable at the time of application for registration and annually on or before the 15th January in each year.

Registration as a registered director is administered through an online process and confirmation of registration is usually within 48 hours. Licensing as a professional director and or corporate director is also administered through an online process and confirmation of licensing is usually within four weeks. Certain requirements must be satisfied before registration or licensing is granted by CIMA.

Significant financial penalties and criminal sanctions apply in the event that a person acts as a director without first being licensed or registered under the DRLA and in the event that a person fails to inform CIMA of changes to their original registration or licence application. For information on the DRLA, please see our publication "Directors Registration and Licensing in the Cayman Islands".

[1] The provisions relating to notice to CIMA will become effective from a date to be specified by Cabinet Order.

5. THE ESTABLISHMENT OF A FUND

Once it has been determined what type of mutual fund is to be established, then setting up the mutual fund will be done in accordance with the instructions relevant to either a company, partnership or unit trust. For further information please see our publications on Cayman Exempted Companies, Segregated Portfolio Companies, Cayman Exempted Limited Partnerships and Cayman Unit Trusts, as well as our application forms in each case, available upon request.

A unit trust is subject to the Trusts Act and is constituted by way of a trust deed or declaration of trust which, as well as containing the usual provisions for the establishment of a trust, provides for the calculation of net asset value per unit and sets out the terms for issue and redemption of units. Further, it is usual for the unit trust instrument to provide for the regulation of the affairs of the unit trust in a manner similar to that of a company. In this regard, provisions dealing with meetings of unit holders, voting rights, appointment of an auditor and distribution of financial statements are common.

The articles (in the case of a mutual fund company) or the partnership agreement (in the case of a partnership) will provide for the calculation of net asset value per share or interest as well as other key matters. Further, the terms and conditions upon which subscriptions and redemptions will be affected must also be included in the relevant constitutional document. If the fund is a regulated or licensed fund, the offering document must be filed with CIMA.

6. SEGREGATED PORTFOLIO COMPANIES

The Companies Act, which is of general application to companies incorporated in the Cayman Islands, including mutual funds, makes provision for the incorporation of companies as segregated portfolio companies ("**SPCs**").

The most significant aspect of an SPC is that any asset which is linked to a particular segregated portfolio is held as a separate fund which is not part of the general assets of the company itself. Such segregated portfolios are held exclusively for the benefit of the account owner of that segregated portfolio and any counterparty to a transaction linked to that segregated portfolio. Any asset which attaches to a particular segregated portfolio is not available to meet liabilities of the company (subject to any agreement to the contrary in the governing instrument) or any of the other segregated portfolios.

Once established, a segregated portfolio company constitutes a single legal entity; each segregated portfolio does not. The company can issue shares and declare dividends on its own account, as well as with respect to each individual segregated portfolio. This can be a very useful device, particularly in the case of umbrella funds and fund of funds structures.

7. OPERATION OF A FUND COMPANY

With respect to the initial offer of interests, the subscription price is usually set for the initial period. After the initial offer, the subscription price per share, unit or interest is determined in accordance with the fund's constitutional documents by reference to the net asset value calculation. The relevant constitutional document may provide for a commission or initial charge to be payable on the issue of a share, unit or interest.

Generally speaking, a mutual fund will appoint an investment manager. The investment manager may be an affiliate of the promoters or operators. The investment manager renders management advice to the mutual fund and the acquisition or disposal of any investment is usually effected by the fund's custodian or prime broker. In most cases a custodian or prime broker will be appointed. The offering of the interests of a mutual fund in jurisdictions outside the Cayman Islands is, of course, subject to the laws of those jurisdictions.

Segregation of Assets: it is necessary for regulated mutual funds to appoint a service provider to ensure the safekeeping of the fund's financial assets and liabilities (portfolio); such portfolio must be segregated and accounted for separately from any assets of the service provider. In the case of a licensed fund, the service provider holding or managing the fund's portfolio must be regulated by CIMA, a recognised overseas regulatory authority or another regulator approved by CIMA. The operators of a fund must also ensure that the fund holds title to fund assets and that maintenance of a record of such fund assets is carried out by an administrator or other independent third party; or, a manager, operator or similar so long as such function is carried out independently from the portfolio management of the fund and that potential conflicts of interest are properly identified, managed, monitored and disclosed to investors of the fund. Further details can be found in CIMA's Rule on Segregation of Assets dated July 2020.

Calculation of Asset Values: regulated funds are required to establish, implement and maintain a written NAV calculation policy that is disclosed in the fund's offering materials and describes the practical and workable pricing and valuation policies, practices and procedures in order to ensure the fund's NAV is fair, complete, neutral and free from material error and is verifiable. Such policy should be based on the International Financial Reporting Standards, or generally accepted accounting principles of the United States of America, Japan, Switzerland or Non-High Risk Jurisdiction. Generally, CIMA requires that the NAV be calculated by a service provider that is independent of the investment manager and operators of the fund although such persons may calculate or assist in calculating the fund's NAV if this is explicitly detailed in the fund offering materials, together with an explanation why another service provider could not be engaged to calculate the fund's NAV. Further details can be found in CIMA's Rule on Calculation of Asset Values dated July 2020.

8. ECONOMIC SUBSTANCE

Investment funds are excluded from the definition of "Relevant Entity" and therefore not required to report on their activities under the International Tax Co-operation (Economic Substance) Act (2024 Revision). However, all Cayman Islands entities must notify the Cayman Islands Tax Information Authority ("**TIA**") of, amongst other things, whether or not it is carrying on a "relevant activity" and, if so, whether or not it is a "relevant entity". The notification to the TIA is by way of an annual Economic Substance Notification ("**ESN**") which must be filed prior to an entity filing its annual return with the General Registry's Corporate Administration Portal ("**CAP**"). As general partnerships are not registered through CAP, the Department of International Tax Compliance (the "**DITC**") has advised that general partnerships must file an ESN in the form of a spreadsheet to registered office service providers for submission to the DITC's Economic Substance Team at DITC.EScompliance@gov.ky[2].

[2] This manual process for general partnerships has been adopted on the basis of advice from the DITC on 29 March 2023.

9. BENEFICIAL OWNERSHIP

Certain companies, limited liability companies and limited liability partnerships are required to maintain beneficial ownership registers at their registered offices and for the information contained therein to be provided to the Cayman competent authority for beneficial ownership, the General Registry. Mutual funds are exempted from the requirement to keep a beneficial ownership register by virtue of being registered under the Act. However, a mutual fund must provide its corporate services provider ("**CSP**") with written confirmation of the exemption with prescribed information together with instructions to file the written confirmation with the competent authority. The mutual fund is required to notify its CSP within one month of becoming aware of any changes to the written confirmation. Although mutual funds are exempted from the primary obligations of the beneficial ownership regime, penalties may still apply under the Monetary Authority (Administrative Fines) Regulations (2024 Revision) (the "**Fines Regulations**") if a mutual fund fails to provide such written confirmation and instructions, or if they incorrectly report that they are an exempted entity. The Fines Regulations are discussed further below.

10. ADMINISTRATIVE FINES

CIMA has significant powers to impose administrative fines on licensed and regulated individuals and entities. These range from non-discretionary fines of CI$5,000/US$6,100 for a minor breach to CI$1,000,000/US$1,220,000 for a very serious breach. CIMA would be able to impose cumulative fines of up to CI$20,000/US$24,390 for a single minor breach. It is important that mutual funds take note, as contraventions or failures to act could give rise to fines. The Fines Regulations contain the prescribed provisions attracting fines, the basis upon which discretion may be exercised, the process for imposing fines, appeals, payment and enforcement. Schedule 1 of the Fines Regulations sets out the prescribed regulatory act provisions and corresponding breach categories in relation to a wide range of legislation including the Mutual Funds Act – these categories range from offences considered to be minor in nature to breaches categorised as very serious.

11. CORPORATE GOVERNANCE

On 14 April 2023 CIMA issued a new Statement of Guidance – Corporate Governance – Mutual Funds and Private Funds (the "**SoG**").

11.1. Noteworthy Principles of the SoG

The SoG applies to all Cayman regulated funds. Although the SoG is 'policy' as opposed to 'law', all operators of mutual funds are expected to be in full compliance with the SoG and, when assessing a mutual fund's direction and management, CIMA may apply the SoG to determine whether a mutual fund has been conducted in a fit and proper manner.

11.2. Rule on Corporate Governance for Regulated Entities

This Rule, which came into effect on 14 October 2023, adopts corporate governance elements from the existing local and international corporate governance frameworks and expands and enhances the scope of the corporate governance regime.

The Rule applies to 'Governing Bodies' (as defined in the Rule) of all regulated entities and requires that they adopt corporate governance frameworks that are commensurate with the size, complexity, structure, nature of business and risk profile of a regulated entity's operations.

In particular, the Rule requires that the corporate governance framework address risk management, outsourcing and internal controls.

At a minimum, the framework must address:

Objectives and strategies	Risk management and internal controls
Governance structure	Conflicts of interest and code of conduct
Oversight and management responsibilities	Remuneration policies and practices
Independence and objectivity	Reliable and transparent financial reporting
Collective duties of governing body	Transparency and communications
Individual duties of directors	Duties of senior management
Appointments and delegations	Relations with CIMA

11.3. Rule and Statement of Guidance: Internal Controls for Regulated Entities

The revised Rule and Statement of Guidance aims to ensure that a regulated entity is structured and operated in order to reasonably assure it is able to (i) carry on its business in an orderly and efficient manner, (ii) safeguard the entity's assets and those of its clients, (iii) maintain proper records and the reliability of financial, operational and regulatory reports and (iv) comply with all applicable acts and requirements. In furtherance of these objectives, guidelines are outlined covering five components of internal control, namely: (i) control environment, (ii) risk identification and assessment, (iii) control activities and segregation of duties, (iv) information and communication and (v) monitoring activities and correcting deficiencies.

11.4. Monitoring of Acts and Regulations

The operators of a regulated mutual fund have a positive duty to monitor acts and regulations affecting the funds industry (including anti-money laundering, counter terrorist financing and counter proliferation financing requirements – see section 10) and to request information to ensure that the fund and its service and/or professional providers are complying with these and, where it is not, provide appropriate direction to ensure compliance. The operators should require regular reporting from the investment manager and other service providers to enable it to make informed decisions and to adequately oversee and supervise the fund.

11.5. Operators

CIMA has recognized that the operator of a fund, normally a non-executive director, is not actively administering or operating the fund but rather has a duty to retain sufficient oversight so as to enable the operator to satisfy itself that the fund is efficiently and effectively operated and managed and in accordance with all applicable acts, regulations and rules. While funds often delegate a number of functions to service providers, delegating the function does not abrogate the operator from ultimate responsibility for the delegated functions. An operator must apply his or her mind to directing the fund through actively enquiring into the affairs of the fund on an on-going basis; operators are expected to be proactive rather than reactive.

The operators must ensure that the fund has a conflict of interest policy and ensure that it is adhered to and that any conflicts are documented. All conflicts should be disclosed at least annually. The operators should meet at least once per year and, where necessary, must request the presence of its service providers. Frequency of meetings should be determined based on the size, complexity, structure, nature of business and risk profile of the fund.

Operators must exercise independent judgment, operate with due skill, care and diligence and act honestly and in good faith. Where appropriate, operators must make relevant enquiries and communicate adequate information to investors.

11.6. Additional Noteworthy Principles

- Operators should comprise an appropriate number of individuals with a diversity of skills, background, experience and expertise to ensure an adequate level of competence.
- Operators should ensure that they have sufficient time to apply their mind to the overseeing and supervising of the fund.
- Operators should ensure that the fund documents are compliant and up to date, particularly the description of investment strategy and conflicts of interest policy.
- Operators should continually monitor and assess delegates, and specifically the investment manager, on an ongoing basis and verify that they are performing their function(s) in terms of the contracts – noting that the operators retain responsibility for delegated functions.
- The operators should review financial results, net asset valuation policy and calculation of net asset value.
- The operators should monitor compliance with investment strategy, criteria and restrictions.
- Operators should communicate adequate information to investors including material changes or changes to investor rights.
- Operators are responsible for ensuring that a full, accurate and clear written record is kept of the operator’s meetings.

- Operators owe a duty to disclose to CIMA any matter which could materially and adversely affect the financial soundness of the fund and any non-compliance with relevant acts, regulations, rules, statements of principles and statements of guidance, including anti-money laundering, counter terrorist financing and counter proliferation financing requirements.

The current SoG promotes and enhances market confidence, helping the Cayman Islands maintain its position as the leading international financial centre for mutual funds.

12. ANTI-MONEY LAUNDERING, COUNTER TERRORIST FINANCING AND COUNTER PROLIFERATION FINANCING COMPLIANCE

Investment Funds are considered to be carrying on "Relevant Financial Business" as defined in the Proceeds of Crime Act (2024 Revision) (the "**POCA**") and are subject to the POCA, the Anti-Money Laundering Regulations (2023 Revision) (the "**Regulations**") and the Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands (the "**Guidance Notes**", collectively with the POCA and the Regulations, the "**AML Regime**") issued by CIMA.

In March 2022, the Anti-Money Laundering Unit released the Cayman Islands' 2021 National Risk Assessment ("**NRA**") which evaluated the money laundering, terrorist financing and proliferation financing risks faced in the Cayman Islands. Amongst its findings, the NRA concluded that, given the Cayman Islands' status as an international financial centre, the Cayman Islands' greater risk exposure is to proceeds-generating crimes committed overseas, in particular, foreign proceeds of crime ("**FPOC**") through fraud, corruption and tax evasion. Banks, securities business and investments and funds face the primary exposure to FPOC. The nature and complexity of business, particularly registrar and transfer agency services, the high volume of transactions and the use of non-face to face contact through referrals or introducers have resulted in the investments sector being assigned a medium-high risk rating while exempt companies are the most implicated corporate structure.

Pursuant to the AML Regime, Funds are required to have internal reporting procedures in place to (1) identify and report suspicious activity; (2) monitor and ensure internal compliance with laws relating to money laundering; and (3) test that their AML system is consistent with the Regulations and the Guidance Notes (the "**Procedures**"). As part of the Procedures, Funds are required to:

(a) adopt a risk based approach to identify, assess and understand money laundering, terrorist financing and proliferation financing risks and clearly document or keep a written record of the risk analysis approach taken;

(b) put in place identification and verification procedures to identify customers and undertake ongoing due diligence measures;

(c) have in place record keeping policies and procedures and investor due diligence information and ensure that transaction records should be available without delay upon a request by competent authorities;

(d) have internal systems and controls relating to audit function, outsourcing, employee screening and training which is proportionate to the nature, scale and complexity of its

activities;

(e) appoint a Compliance Officer ("**AMLCO**"), to act as compliance officer, who shall have overall responsibility for ensuring compliance by the Fund with the AML Regime; and

(f) appoint a Money Laundering Reporting Officer ("**MLRO**"), to act as MLRO and a Deputy MLRO ("**DMLRO**"), who shall have responsibility for receiving reports of, investigating and reporting suspicious activity to the Reporting Authority in accordance with the Guidance Notes.

While the ultimate responsibility for maintaining and implementing satisfactory Procedures remains with the Fund, the obligations may be met by delegating or outsourcing those functions. Prior to entering into any outsourcing arrangement relating to its AML compliance functions, a fund must assess any associated risks, including any relevant country risks and must conduct due diligence on any proposed service provider to ensure that it is fit and proper to perform the outsourced function. Regulated funds must notify CIMA of their AMLCO, MLRO and DMLRO appointments and any changes thereto. For further information on the AML Regime, please contact your Conyers contact.

13. FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

13.1. What is FATCA?

FATCA is a US federal law that aims to reduce tax evasion by US persons. FATCA has significant extra-territorial implications and, most notably, requires foreign financial institutions ("**FFIs**") to report information on accounts of US taxpayers to the US Internal Revenue Service ("**IRS**"). If an FFI fails to enter into the necessary reporting arrangements with the IRS, a 30% withholding tax is imposed on US source income and other US related payments of the FFI.

In order to facilitate reporting under and reduce the burden of compliance with FATCA, the Cayman Islands has signed a Model 1B intergovernmental agreement with the US (the "**US IGA**"). The US IGA allows Cayman Islands entities that are FFIs to comply with the reporting obligations imposed by FATCA without having to enter into an agreement directly with the IRS. Instead, a Cayman Islands FFI may report directly to the TIA and, provided it complies with the relevant procedures and reporting obligations, will be treated as a deemed compliant FFI that is not subject to automatic withholding on US source income and other US related payments.

The impact FATCA will have on a Cayman Islands entity fundamentally depends on one key question: is the Cayman Islands entity an FFI?

The first step a Cayman Islands entity needs to take is to determine its FATCA classification and, in particular, whether or not it is an FFI.

Any Cayman Islands entity that is not an FFI – such as a typical Cayman Islands holding company - will be a non-financial foreign entity (a "**NFFE**") for the purposes of FATCA. Cayman Islands NFFEs are not generally subject to registration or reporting requirements under FATCA, but they will be required to self-certify their status to financial institutions and other withholding agents with whom they maintain accounts to avoid FATCA withholding.

13.2. FATCA Classification for Cayman Islands Funds

FATCA is very complex and a detailed analysis is required in each case to determine if a Cayman Islands entity is in fact a FFI. Generally an "Investment Entity" that conducts (or is managed by an entity that conducts) trading or portfolio and investment management activities as a business on behalf of a customer or otherwise invests, administers or manages funds or money on behalf of other persons will fall within the definition of an FFI (unless exemptions apply).

Almost all hedge funds and private equity funds will be Investment Entities and therefore qualify as FFIs under FATCA. The one exception is that funds where more than 50% of the gross revenues are from real estate (or other non-financial assets) will generally fall outside the definition of Investment Entity (and therefore FFI) for the purposes of FATCA. There are some other limited exemptions available to funds, but these are expected to be of limited practical use for the vast majority of mutual funds.

It is important to note that, where a master-feeder structure is used, both the master fund and the feeder fund will be FFIs. Furthermore, a subsidiary Cayman Islands trading entity of a hedge fund is also likely to be an Investment Entity and therefore an FFI. Cayman Islands entities that act solely as managers and advisers of hedge funds and private equity funds will typically not need to register and report as FFIs.

13.3. FATCA Classification for Cayman Islands Managers and Advisers

Although Cayman Islands managers and advisers fall within the definition of Investment Entity (and therefore FFI), the US IGA contains an exemption for a Cayman Islands FFI that qualifies as an Investment Entity solely because it (a) renders investment advice to, and acts on behalf of, or (b) manages portfolios for, and acts on behalf of, a customer for the purposes of investing, managing, or administering funds deposited in the name of the customer with a participating FFI. Accordingly, Cayman Islands managers and advisers will generally not be required to register with the IRS and report on their own account. They may, however, be required to self-certify as NFFEs.

13.4. Required Steps

Cayman Islands Reporting FFIs are required to have a Global Intermediary Identification Number ("**GIIN**") directly from the Internal Revenue Service of the United States. For newly incorporated funds qualifying as a Cayman Islands Reporting FFI, a GIIN should be obtained as soon as possible and, in any event, within 30 days of commencing business[3]. Further, Cayman Islands Reporting FIs are required to identify reportable accounts and report certain designated information to the TIA in accordance with prescribed timeframes. Significant penalties and/or enforcement action can result in the event of a failure to report. All Cayman FIs that have reporting obligations are required to notify the TIA by 30 April in the first calendar year in which they are required to comply. Full reporting is then due on or before 31 July in each year. For further information on FATCA please see our publication "The Impact of FATCA on Cayman Entities".

[3] Tax Information Authority (International Tax Compliance) (United States of America) Regulations (2021 Revision), section 4(2).

14. COMMON REPORTING STANDARD (CRS)

14.1. What is CRS?

CRS is a global information exchange regime developed to facilitate and standardize the automatic exchange of information ("**AEOI**") on residents' assets and income between participating jurisdictions on an annual basis. The Cayman Islands, along with more than 100 other countries have signed or committed to sign multilateral competent authority agreements providing the legal basis through which countries can agree to the CRS. The Cayman Islands have implemented the CRS through The Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations (2021 Revision) pursuant to the Tax Information Authority Act (2021 Revision). In its Peer Review of the AEOI on 9 November 2022, the Organisation for Economic Co-operation and Development concluded that the Cayman Islands has put the necessary legal frameworks in place and is successfully exchanging information without significant timing or technical issues. The Cayman Islands was also awarded the highest possible rating for the effectiveness of its AEOI regime.

Similarly to FATCA, the CRS requires certain Cayman Islands FIs to identify the tax residency of their account holders and then to report information on reportable accounts held by individuals and entities on or before 31 July in each year. For the CRS there are notification requirements for both reporting and non-reporting FIs.

14.2. CRS Classification for Cayman Islands Funds

For CRS purposes, FI is a broad concept and includes, amongst other things investment entities whose income is primarily attributable to (re)investing or trading in financial assets, if the relevant entity is "managed by" another FI. In some cases, organisations that have been unaffected by FATCA may find that they are required to comply with CRS. Some of the key differences between FATCA and CRS are as follows:

- CRS is based on tax residency rather than citizenship;
- More Cayman entities will be affected as the scope of applicable exemptions is narrower;
- Thresholds for *de minimis* financial accounts are significantly reduced under the CRS compared to FATCA;
- The CRS does not impose withholding tax.

Almost all hedge funds and private equity funds will be FIs under CRS.

For further information on CRS please see our publication "The Cayman Islands and the Common Reporting Standard Issued by The Organisation for Economic Co-Operation and Development".