

Cayman Islands Private Funds

CONYERS

conyers.com

Preface

This publication has been prepared for the assistance of those who are considering the formation of a private 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.

Conyers

TABLE OF CONTENTS

1.	INTRODUCTION: PRIVATE FUNDS IN CAYMAN	4
2.	DEFINITION	4
3.	PRIVATE FUND REGISTRATION	6
4.	THE ESTABLISHMENT OF A FUND	8
5.	OPERATION OF A PRIVATE FUND	8
6.	CORPORATE GOVERNANCE	10
7.	ADMINISTRATIVE FINES	13
8.	ANTI-MONEY LAUNDERING, COUNTER TERRORIST FINANCING AND COUNTER PROLIFERATION FINANCING COMPLIANCE	13
9.	ECONOMIC SUBSTANCE	14
10.	FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)	15
11.	BENEFICIAL OWNERSHIP	16

1. INTRODUCTION: PRIVATE FUNDS IN CAYMAN

The Cayman Islands is among the world's most attractive locations for the establishment of private funds. The Private Funds Act (as amended) and associated regulations (the "**Act**") provides for the registration of certain closed-ended funds ("**private funds**") with the Cayman Islands Monetary Authority ("**CIMA**").

2. DEFINITION

A private fund is defined as a "company, unit trust or partnership that offers or issues or has issued investment interests, the purpose or effect of which is the pooling of investor funds with the aim of enabling investors to receive profits or gains from such entity's acquisition, holding, management or disposal of investments, where:

(a) the holders of investment interests do not have day-to-day control over the acquisition, holding, management or disposal of the investments; and

(b) the investments are managed as a whole by or on behalf of the operator of the private fund, directly or indirectly."

Excluded from the definition of private fund are:

(a) persons licensed under the Banks and Trust Companies Act or the Insurance Act;

(b) persons registered under the Building Societies Act or Friendly Societies Act; and

(c) a list of business activities described as "non-fund arrangements".

Non-fund arrangements are listed in a Schedule to the Act and include, among other things:

- pension funds;
- securitisation SPVs;
- joint ventures;
- employee incentive schemes;
- holding vehicles;
- structured finance vehicles; and
- funds whose investment interests are listed on a stock exchange specified by CIMA.

Non-fund arrangements are further defined in the Statement of Guidance on Non-Fund Arrangements issued by CIMA in November 2020.

The Act also provides for **restricted scope private funds** which are private funds that are exempted limited partnerships managed or advised by a person licensed or registered by CIMA or a recognised overseas authority and in which all of the investors are either high net worth or sophisticated persons. It

is still to be disclosed how the registration and ongoing requirements will differ for this category of private funds.

It should be noted for the purposes of the private fund definition that:

- "company" also includes foreign companies, "unit trust" includes a foreign unit trust and "partnership" includes foreign partnerships, general or limited, but excludes general partnerships constituted under Cayman Islands law;
- an "investment interest" includes a share, LLC interest, trust unit or partnership interest that carries an entitlement to participate in the profits or gains of the entity and is not redeemable or repurchasable at the option of the investor;
- "investment interest" excludes debt and therefore a fund which only issues debt instruments would not be regarded as a private 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 marketing materials in respect of the private 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, or in the case of a limited liability company, a manager of the limited liability company.

A private fund must not carry on or attempt to carry on business in or from the Cayman Islands without being registered with CIMA unless it falls within the exemptions provided in the Act.

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

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

(a) sophisticated persons;

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

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

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

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

(f) 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;

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

(h) an exempted limited partnership;

(i) a limited liability partnership; 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 investment interests to the public in the Cayman Islands where they do so:

(a) by or through an entity licensed under the Securities Investment Business Act; and

(i) the interests are listed on a stock exchange specified by CIMA by notice in the Gazette; or

(ii) the Foreign Fund is regulated by a recognised overseas regulatory authority approved by CIMA.

3. PRIVATE FUND REGISTRATION

3.1. Requirements for Private Funds

Applications are submitted electronically through CIMA's secured regulatory enhanced electronic forms submission ("**REEFS**") web portal, which requires certain particulars to be filed together with:

(a) a certificate of incorporation/registration,

(b) constitutional documents,

(c) offering memorandum/summary of terms or marketing materials,

(d) auditor letter of consent,

(e) administrator letter of consent (if applicable),

(f) structure chart,

(g) application fee, and

(h) registration fee (and then annually thereafter by 15 January),

within 21 days after the fund's acceptance of capital commitments and before accepting capital contributions for the purposes of investment. Details of any change that materially affects any information submitted to CIMA must be filed with CIMA within 21 days.

The date that all required documentation and payment have been received by CIMA will be the date reflected on the private fund's registration certificate.

3.2. Regulatory Powers

The Act confers regulatory powers on CIMA, the Cabinet and the Court. Regulated private 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, reorganisation 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 private funds are briefly as follows:

- **Name of Fund**: CIMA may direct any private fund to change its name if the existing name is regarded as confusing or misleading or suggests falsely that the private fund has a special status in relation to or derived from the Government or the Crown.
- **Special Audit**: CIMA may at any time direct a private 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 private 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 private fund administrators.
- **Power to cancel or revoke registration**: CIMA has the power to de-register a private 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 private fund which:

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

    (ii) is carrying on business fraudulently or otherwise in a manner detrimental to the public interest or to the interests of its investors or creditors; or

    (iii) 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

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

    (v) is carrying on or attempting to carry on business without complying with any condition of its registration; or

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

(vii) 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 private funds, as well as general duties and powers to maintain a review of the private fund business in the Cayman Islands.

4. THE ESTABLISHMENT OF A FUND

Once it has been determined what type of private fund is to be established, then setting up the private 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 Limited Liability Companies, Cayman Exempted Limited Partnerships and Cayman Unit Trusts, as well as our application forms in each case, available upon request.

Typically the constitutional documents of the entity will outline the regulation of the affairs of the entity, terms of issue of interests, meetings of the operators, voting rights and other key matters.

5. OPERATION OF A PRIVATE FUND

In a private fund, investors cannot redeem or exit from the fund at their option until it is wound up. Private funds will typically only accept investors for a set period such that the number of investors is fixed at the closing of the subscription deadline. As investors will wish to know how long their capital will be invested in the private fund, private funds will usually have a set finite lifespan.

Private funds that have not received capital contributions from their investors are not legally required to file audited accounts or annual returns, however, they must follow the notification process prescribed in the Private Funds (Amendment) Regulations (as amended). In these circumstances, operators are required to submit a declaration within six months after the end of the private fund's financial year.

Once a regulated private fund is in receipt of capital contributions, the Act requires:

- **Audit**: The Act requires an annual audit of the accounts of every regulated private 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 private fund from filing audited accounts. This discretion will only be exercised where the private fund has a valid reason not to file audited accounts. CIMA'S Regulatory Policy concerning Exemptions from Audit Requirements for Private Funds dated March 2022 addresses circumstances where an audit waiver or extension may be needed and applications for such are considered on a case-by-case basis. It should be noted that CIMA may consider extending a private fund's first audit period for a maximum of 18 months from the date of registration and may also extend the fund's last audit period for a maximum of 18 months from the date of the last financial year end for which an audit has been filed. The audited accounts are to be submitted with the fund annual return ("**FAR**") and operator declaration (see below).

- **Annual filing**: A regulated private fund must file a FAR with CIMA in the form prescribed in the Private Funds (Annual Return) Regulations, 2021 (the "**Private Funds Regulations**"), along with an annual fee and operator declaration. The annual return is usually submitted through the auditor together with the audited accounts 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. Submission is required via REEFS. A maximum of three one month extensions may be requested from CIMA with a fee for each request. Please refer to the FAR Completion Guide for further guidance on the filing process.

- **Related fund entity filing**: The Private Fund Regulations require that certain information is reported in respect of a private fund's related entities. Consequently, a private fund must submit a related fund entity form ("**RFE**") with the FAR to satisfy the reporting requirements prescribed in the Private Funds Regulations. The RFE is available, along with the relevant completion guidance, on CIMA's website.

- **Operator declaration**: The operator declaration confirms that a private fund has complied with sections 16 (valuation), 17 (safekeeping of assets) and 18 (cash monitoring) of the Act.

- **Valuation:** A private fund is required to have proper valuations of its assets at appropriate frequencies (at least annually) unless the requirement is waived by CIMA. To the extent valuations are not performed by an appropriately qualified third party, the valuation function conducted by the manager or operator should be independent from the portfolio management function or the potential conflicts of interest should be properly identified and disclosed to investors.

  According to CIMA's Rule on Calculation of Net Asset Values – Registered Private Funds, funds are required to establish, implement and maintain a NAV calculation policy that ensures a fund's 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. The Rule requires, amongst other things, that the policy must be written and disclosed in the fund's constitutional documents or marketing materials or other form of investor communication typically used by the fund.

- **Safekeeping:** Unless not practical nor proportionate to do so, a private fund is required to appoint a custodian to hold the custodial fund assets and verify that the private fund holds title to fund assets and maintain a copy of the same.

- **Cash monitoring:** Private funds are required to appoint a person to monitor the private fund's cash flows, ensure the cash has been booked in cash accounts opened in the name or for the account of the private fund and ensure that payments made by investors in respect of investment interests have been received. To the extent the cash monitoring functions are not performed by an administrator, custodian or other independent third party, the cash monitoring function conducted by the manager or operator should be independent from the portfolio management function or the potential conflicts of interest should be properly identified and disclosed to investors.

- **Identification of securities:** Private funds that regularly trade securities or hold them on a consistent basis must maintain a record of the identification codes (International Securities Identification Number) and make such information available to CIMA upon request.

- **Segregation of Assets:** Pursuant to CIMA's Rule on the Segregation of Assets – Registered Private Funds all financial assets and liabilities (the "**portfolio**") of a fund must be segregated and accounted for separately from any assets of the manager, operator or person appointed by the fund to hold custody[1] of the fund assets. The aim of this rule is to ensure that such persons do not use the portfolio to finance their own or any other operations. The operators of the fund must establish, implement and maintain (or oversee the same) strategies, policies, controls and procedures to ensure compliance with CIMA's rules, consistent with the fund's marketing materials and appropriate for the size, complexity, and nature of the fund's activities and investors.

The above operational requirements will not apply to an alternative investment vehicle ("**AIV**") (other than the annual filing requirements) where International Financial Reporting Standards or the generally accepted accounting principles of the United States of America, Japan, Switzerland or a non-high risk jurisdiction permit consolidated or combined financial account reporting and a private fund chooses to report consolidated or combined financial statements with such AIV. AIV means a company, unit trust, partnership of similar that is formed in accordance with the constitutional documents of a private fund for the purposes of making, holding and disposing of one or more investments wholly or mainly related to the business of that private fund and only has as its members, partners or trust beneficiaries, persons that are members, partners or trust beneficiaries of the private fund.

The offering of the interests of a private fund in jurisdictions outside the Cayman Islands is, of course, subject to the laws of those jurisdictions. It should be noted that a Cayman AIV of a non-Cayman main fund will, if it meets the definition of a private fund, be required to register as a stand alone private fund under the Act and will be required to have its accounts audited annually by a CIMA-approved auditor and submit its audited accounts and fund annual return to CIMA within six months of the end of each financial year.[2]

6. CORPORATE GOVERNANCE

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

6.1. 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.

[1] Per CIMA Notice of 21 July 2020, this does not prohibit prime brokerage/custody arrangements that allow a custodian/sub-custodian to hold all client assets in a commingled client omnibus account along with the assets of other clients.

[2] Per CIMA Notice of 12 August 2020.

6.2. 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

6.3. 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.

6.4. Monitoring of Acts and Regulations

The operators of a regulated private 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 11) 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.

6.5. Operators

CIMA has recognised 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.

CIMA requires a minimum of two directors for private fund applicants that are companies and will require a minimum of two natural persons to be named in respect of a general partner or corporate director of a private fund. Directors appointed to private funds are not required to be registered pursuant to the Director Registration and Licensing Act.

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.

6.6. 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.

7. ADMINISTRATIVE FINES

CIMA has significant powers to impose administrative fines on licensed and regulated individuals and entities. CIMA would be able to impose cumulative fines. It is important that private 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 Act – these categories range from offences considered to be minor in nature to breaches categorised as very serious.

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

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 "**AML 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 AML 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 AML 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, including to persons who are subject to the anti-money laundering requirements of a country that the fund has assessed and documented as having a low degree of risk of money laundering and terrorist financing. 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.

9. ECONOMIC SUBSTANCE

Investment funds are excluded from the definition of "relevant entity" and therefore are not required to report on their activities under the International Tax Co-operation (Economic Substance) Act (as amended). However, all Cayman Islands entities (including partnerships) must notify the Cayman Islands Tax Information Authority ("**TIA**") of, amongst other things, whether or not they are 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[3].

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

10. FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA)

10.1. 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.

10.2. 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 a "private fund" established in the Cayman Islands will be classified as an "Investment Entity" for FATCA purposes if it 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. As a result, almost all private funds – including private equity, venture capital, and closed-ended funds – will be Investment Entities and therefore qualify as FFIs under FATCA, unless a specific exemption applies (for example, where more than 50% of gross revenues are from real estate or other non-financial assets). Where a master-feeder structure is used, both the master private and the feeder private fund will be FFIs. In addition, a subsidiary Cayman Islands trading entity of a private fund is also likely to be an Investment Entity and therefore an FFI.

10.3. 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.

10.4. Required Steps

Cayman Islands Reporting FFIs, including private funds, are required to have a Global Intermediary Identification Number ("**GIIN**") directly from the Internal Revenue Service of the United States. For newly established private 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[4]. Further, Cayman Islands Reporting FFIs 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 Islands Reporting FFIs 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".

11. BENEFICIAL OWNERSHIP

Cayman Islands companies, limited liability companies, limited liability partnerships, foundation companies, exempted limited partnerships and limited partnerships (together "**Legal Persons**") are in scope of the Beneficial Ownership Transparency Act (as amended) (the "**BOT Act**"). All Legal Persons are required to maintain a beneficial ownership register, unless they can avail of an 'Alternative Route to Compliance'.

Private funds that are registered with CIMA will be able to rely on an Alternative Route to Compliance and may opt to instead provide the contact details of a person (the "**Contact Person**") who is licensed or registered in the Cayman Islands to provide beneficial ownership information, for example, the fund's registered office provider. Conyers can provide this service to CIMA registered private funds, if engaged to do so. The Contact Person is required to provide beneficial ownership information relating to the private fund to the competent authority within 24 hours of a request being made or within any other time as the competent authority may reasonably stipulate. A private fund may choose to forego the Alternative Route to Compliance and maintain a beneficial ownership, if it so wishes.

Penalties can be imposed in respect of offences under the BOT Act, and administrative fines may to be imposed for failure to comply with various obligations under the BOT Act.

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

This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

© Conyers August 2025