

Fund Management 2021

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Lexology Getting The Deal Through is delighted to publish the seventh edition of *Fund Management*, which is available in print and online at www.lexology.com/gtdt.

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

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

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

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Oliver Rochman of Morgan, Lewis & Bockius LLP, and to Michelle Moran of K&L Gates LLP for her assistance with previous editions.



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FUND MANAGEMENT REGULATION

Regulatory framework and authorities

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

The main regulatory body in the Cayman Islands that regulates open-ended investment funds, closed-ended investment funds, fund managers and parties marketing investment funds is the Cayman Islands Monetary Authority (CIMA). The main statutes from which CIMA derives its supervisory powers and duties in respect of investment funds are the Mutual Funds Act and the Private Funds Act, and in respect of fund managers, is the Securities Investment Business Act (the SIB Act).

Fund administration

- 2 | Is fund administration regulated in your jurisdiction?

A Cayman Islands-domiciled entity that carries on business as a mutual fund administrator is required to have a valid licence for doing so and is required to be regulated by CIMA. There is more than one type of mutual fund administrator licence and CIMA will assess, among other things, whether the applicant has sufficient expertise to administer regulated investment funds (both open-ended and closed-ended) and whether the business as a mutual fund administrator will be administered by persons who are fit and proper to be directors or, as the case may be, managers or officers in their respective positions.

Mutual fund administration is defined in the Mutual Funds Act as the management or administration of a mutual fund to provide the principal office of the mutual fund in the Cayman Islands or the provision of an operator to the mutual fund. An overseas fund administrator that is not established in the Cayman Islands is not regulated by CIMA and may be the administrator of a Cayman Islands investor fund if the administrator is authorised or otherwise permitted to carry out administration activities to investment funds in any non-high risk jurisdiction.

Authorisation

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

The vast majority of open-ended funds will qualify as mutual funds under the Mutual Funds Act (as amended), which requires mutual funds to be licensed or regulated as such. Closed-ended funds (ie, funds that issue investment interests that are not redeemable at the option of the investor of record), which fall within the scope of the Private Funds Act, are required to register with, and consequently become regulated by, CIMA.

The authorisation process for an open-ended fund will depend on the regulatory category it chooses to register under (eg, a licensed fund under section 4(1)(a) of the Mutual Funds Act, an administered fund under section 4(1)(b) of the Mutual Funds Act, a registered fund under section 4(3) of the Mutual Funds Act, or a limited investor fund under section 4(4) of the Mutual Funds Act). For closed-ended funds, the authorisation process requires the private fund to:

- submit an application for registration to CIMA within 21 days of its acceptance of capital commitments from investors for the purposes of investments;
- file prescribed details in respect of the private fund with CIMA;
- pay a prescribed annual registration fee to CIMA in respect of the private fund;
- comply with any conditions of its registration imposed by CIMA; and
- comply with the provisions of the Private Funds Act.

A Cayman Islands-domiciled fund manager will have to either apply to CIMA for a licence to undertake business as such under the Securities Investment Business Act (as revised) or apply to CIMA to be registered under a less regulatory onerous regime as a Registered Person. An overseas fund manager can provide services to a Cayman Islands investment fund and there is no requirement for the overseas fund manager to be licensed by or registered with CIMA unless that fund manager establishes itself in the Cayman Islands. Operators of mutual funds, and private funds falling within the scope of the Private Funds Act, such as directors, are subject to registration or licensing requirements under the Director Registration and Licensing Act and are required to register with CIMA.

Territorial scope of regulation

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

The laws in the Cayman Islands (eg, Mutual Funds Act, Private Funds Act and SIB Act) are not extraterritorial in scope and effect. An overseas fund manager can provide services to a Cayman Islands investment fund and there is no legal requirement for the overseas fund manager to be licensed by or registered with CIMA unless that fund manager establishes operations in the Cayman Islands.

Acquisitions

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

There is no requirement for an overseas fund manager to be licensed by or be registered with CIMA unless that fund manager establishes itself in the Cayman Islands. Accordingly, there would be no need for

any prior notification to, or authorisation by, CIMA of a change in controlling or non-controlling stake in a fund manager established overseas. A fund manager regulated in the Cayman Islands (ie, whether as a CIMA licensee or a registered person) under the SIB Act is prohibited from issuing, voluntarily transferring or disposing of any shares or partnership interests (as applicable) without the prior approval of CIMA, but CIMA may grant an exemption from this prior approval requirement where the fund manager's securities are publicly traded on a recognised securities exchange.

Restrictions on compensation and profit sharing

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

There are no regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements.

FUND MARKETING

Authorisation

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

Investment funds (whether structured as an exempted company or a limited liability company (LLC)) are restricted from making an offer of shares of the company or interests of the LLC to the public in the Cayman Islands to subscribe for such securities unless those securities are listed on the Cayman Islands Stock Exchange. This restriction on the public offer of securities is contained in the Companies Act and the Limited Liability Companies Act, but there are no similar restrictions in the laws governing limited partnerships or unit trusts. The term 'public in the Islands' excludes certain entities and residents, including other Cayman Islands exempted companies, LLCs, exempted limited partnerships, any exempted or ordinary non-resident companies, foreign companies registered in the Cayman Islands and foreign limited partnerships. The Private Funds Act separately states that the term 'public in the Islands' does not include sophisticated persons and high net worth persons (as defined under the Securities Investment Business Act (the SIB Act)), which means that making an offer of securities to 'private funds' (as defined in the Private Funds Act) in the Cayman Islands is not restricted. Private funds would most likely qualify as sophisticated persons or high net worth persons, or both.

An overseas investment fund that wishes to make an offering of its securities to the public in the Cayman Islands will need to either (1) register with the Cayman Islands Monetary Authority (CIMA) as a mutual fund under the Mutual Funds Act or a private fund under the Private Funds Act or (2) market its securities through a person who is appropriately licensed or authorised by CIMA under the terms of the SIB Act (provided that the securities being offered to the public in the Cayman Islands are listed on a stock exchange approved by CIMA or the investment fund is regulated by a recognised overseas regulatory authority approved by CIMA).

8 | What marketing activities require authorisation?

Arranging deals in securities with a view to another person dealing in securities, or participating in the arrangements for dealing in securities are regulated under the SIB Act and, therefore, would require prior authorisation from CIMA.

Territorial scope and restrictions

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

An entity that is performing marketing activities for an investment fund from within the Cayman Islands is required by the terms of the SIB Act to obtain a licence from, or otherwise register with, CIMA, prior to engaging in such activities.

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

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

Commission payments

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

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

RETAIL FUNDS

Available vehicles

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

The statutory and regulatory frameworks that apply to investment funds in the Cayman Islands do not distinguish between retail funds and non-retail funds as the Cayman Islands is not primarily known as a retail fund jurisdiction. Its laws and regulations applicable to investment funds are geared mainly towards attracting institutional investors. Accordingly, the legal vehicle used for an investment fund is typically based on whether the fund's strategy will be open-ended or closed-ended. The exempted company (which includes the segregated portfolio company) is the most commonly used legal vehicle for open-ended funds and the exempted limited partnership is the most commonly used legal vehicle for closed-ended funds. Both types of legal vehicles are formed by filing formation documents with the Companies Registry and paying the requisite government fee. There are no special requirements that apply to managers or operators of retail funds (which for present purposes are taken to mean funds that permit an investor to invest an initial minimum amount of less than US\$100,000).

Laws and regulations

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

The statutory and regulatory frameworks that apply to investment funds in the Cayman Islands do not distinguish between retail funds and non-retail funds. Under section 4(1)(b) of the Mutual Funds Act, a mutual fund can register with the Cayman Islands Monetary Authority (CIMA) and permit its investors to each invest an initial minimum amount of less than US\$100,000. This type of fund is often referred to as a 'retail' fund. However, the regulatory framework that applies to this category of mutual fund (referred to as an administered fund) is pretty much the same as is applicable to other mutual funds registered with CIMA. Closed-ended funds that fall within the scope of the Private Funds Act and are, therefore, registered with, and regulated by, CIMA do

not have a minimum initial investment threshold set by law and, therefore, investors will simply have to comply with the investment limits and restrictions set by the manager or operator of the fund.

The Retail Mutual Funds (Japan) Regulations are an exception to the above in that they effectively make a distinction between retail funds and non-retail funds by providing a compliance framework for certain licensed funds under section 4(1)(a) of the Mutual Funds Act that will market to retail investors in Japan, enabling these funds to automatically comply with the applicable securities laws and regulations in Japan. However, these funds are merely a sub-set of licensed funds, which themselves only comprise approximately 1 per cent of Cayman Islands' mutual funds.

Authorisation

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

All mutual funds and all closed-ended funds that fall within the scope of the Private Funds Act are required to be registered with, and be regulated by, CIMA.

Marketing

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

Investment funds (whether structured as an exempted company or a limited liability company (LLC)) are restricted from making an offer of shares of the company or interests of the LLC to the public in the Cayman Islands to subscribe for such securities unless those securities are listed on the Cayman Islands Stock Exchange. There are no similar restrictions in the laws governing limited partnerships or unit trusts. The term 'public in the Islands' excludes certain entities and residents, including other Cayman Islands exempted companies, LLCs, exempted limited partnerships, any exempted or ordinary non-resident companies, foreign companies registered in the Cayman Islands and foreign limited partnerships. It also excludes sophisticated persons and high net worth persons (as defined under the Securities Investment Business Act (SIB Act)), which means that making an offer of securities to 'private funds' (as defined in the Private Funds Act) in the Cayman Islands is not restricted. Private funds would most likely qualify as sophisticated persons or high net worth persons, or both. An overseas investment fund that wishes to make an offering of its securities to the public in the Cayman Islands will need to either (1) register with CIMA as a mutual fund under the Mutual Funds Act or a private fund under the Private Funds Act or (2) market its securities through a person who is appropriately licensed or authorised by CIMA under the terms of the SIB Act (provided that the securities being offered to the public in the Cayman Islands are listed on a stock exchange approved by CIMA or the investment fund is regulated by a recognised overseas regulatory authority approved by CIMA). However, there is no legal requirement for a local entity to be involved in the fund marketing process.

Managers and operators

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

The statutory and regulatory framework that apply to investment funds in the Cayman Islands do not distinguish between retail funds and non-retail funds. There are no special requirements that apply to managers or operators of retail funds.

Investment and borrowing restrictions

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

There are no specific legal investment and borrowing restrictions on retail funds under Cayman Islands laws.

Tax treatment

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

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

Asset protection

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

There are no legal requirements in the Cayman Islands for assets of a mutual fund to be held by a separate custodian located in the Cayman Islands. Closed-ended funds that fall within the scope of the Private Funds Act are required to appoint a custodian:

- to hold the private fund's assets that are capable of physical delivery or capable of registration in a custodial account except where that is neither practical nor proportionate given the nature of the private fund and the type of assets held; and
- to verify title to, and maintain records of, fund assets. However, there is no legal requirement for the custodian to be located in the Cayman Islands.

Governance

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

Mutual funds regulated by CIMA must, as long as there is a continuing offering, update their offering documents and prescribed particulars within 21 days of any material change, and are required to file the updated offering document or the prescribed particulars with CIMA within this 21-day period.

A private fund is required under the Private Funds Act to notify CIMA of any change that materially affects any information submitted to CIMA and of any change of its registered office or the location of its principal office.

The private fund will have 21 days after making the change or becoming aware of the change to file details of the change with CIMA.

All funds regulated by CIMA (mutual funds and private funds) are required to have their accounts audited annually and such audited financial statements must be filed with CIMA within six months of the year end of the fund, along with a financial annual return form including prescribed details, signed by a director. These audited financial statements must be signed off by a CIMA approved Cayman Islands-based audit firm.

Reporting

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

Mutual funds regulated by CIMA must, as long as there is a continuing offering, update their offering documents and prescribed particulars within 21 days of any material change, and are required to file the updated offering document or the prescribed particulars with CIMA within this 21-day period.

A private fund is required under the Private Funds Act to notify CIMA of any change that materially affects any information submitted to CIMA and of any change of its registered office or the location of its principal office.

The Private Fund will have 21 days after making the change or becoming aware of the change to file details of the change with CIMA.

All funds regulated by CIMA (mutual funds and private funds) are required to have their accounts audited annually and such audited financial statements must be filed with CIMA within six months of the year end of the fund, along with a financial annual return form including prescribed details, signed by a director. These audited financial statements must be signed off by a CIMA approved Cayman Islands-based audit firm.

Issue, transfer and redemption of interests

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

Restrictions can be contained in the constitutive documents of a fund or otherwise in the terms of issue of the relevant equity interests or investment interests of the fund.

NON-RETAIL POOLED FUNDS

Available vehicles

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

Open-ended funds

Exempt companies

Exempt companies are the most common legal vehicle for open-ended funds. The exempted company limited by shares and the exempted segregated portfolio companies (SPCs) make up the overwhelming majority of open-ended funds and accounted for over 85 per cent of total open-ended funds registered with the Cayman Islands Monetary Authority (CIMA) as at the end of 2019.

It is possible to incorporate an exempted company limited by shares (including an SPC) on either a standard basis (which takes four to five business days after submission of formation documents to the Registrar of Companies) or on an express (same-day) basis subject to paying an additional express fee. Incorporation is effected by filing the company's memorandum and articles of association and an affidavit sworn by the subscriber to the memorandum of association with the Registrar of Companies. Unless the company proposes to use a restricted word in its name (eg, 'bank' or 'insurance') no prior consent or approval is required from CIMA or any other government agency. The memorandum of association is required to contain certain basic information about the company, including its registered office address, its authorised share capital and the objects for which it is incorporated. Shares can be denominated in any currency and denomination. There is no minimum or maximum amount prescribed for authorised, issued or paid-up share capital (although at least one share must be in issue at the time of incorporation).

LLCs

A limited liability company (LLC) is a corporate entity that has separate legal personality to its members. Formation of an LLC requires the filing of a registration statement with the Registrar of Companies and payment of the requisite government fee. The LLC must have at least one member and it can be member managed (by some or all of its members) or the LLC agreement can provide for the appointment of persons (who need not be members) to manage and operate the LLC. The liability of an LLC's members is limited and members can have

capital accounts and can agree among themselves (in the LLC agreement) how the profits and losses of the LLC are to be allocated and how and when distributions are to be made (similar to a Cayman Islands exempted limited partnership). An LLC may be formed for any lawful business, purpose or activity and it has full power to carry on its business or affairs unless its LLC agreement provides otherwise. An LLC may (but is not required to) use one of the following suffixes in its name: Limited Liability Company, LLC or L.L.C.

The LLC structure is an attractive option for certain Cayman closed-ended investment funds (eg, they facilitate aligning the rights of investors in onshore and offshore investment funds in a main fund and sub-fund structures) as well as for general partner entities and other carried interest distribution vehicles.

Limited partnerships

Exempted limited partnerships (ELPs) are most commonly used for closed-ended funds and, to the extent that they fall within the scope of the Private Funds Act, are required to be registered with CIMA.

Unit trusts

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

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

Closed-ended funds

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

An ELP is a legal arrangement and does not have separate corporate personality. The terms of the ELP are set out in a limited partnership agreement and registered in the Cayman Islands by filing a registration statement with the Registrar of Exempted Limited Partnerships containing the following details:

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

Laws and regulations

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

Open-ended funds

The Mutual Funds Act (for open-ended funds) and the Private Funds Act (for closed-ended funds) are the two main statutes relevant to the regulation of investment funds in the Cayman Islands. CIMA is the regulatory body responsible for compliance with these laws and related regulations and has broad powers of enforcement.

The Mutual Funds Act defines a mutual fund as '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...' The reference to 'equity interests' means that debt instruments (including warrants, convertibles and sukuk instruments) are excluded and funds issuing such instruments will not be required to register with CIMA as a mutual fund. The scope of regulation extends to Cayman incorporated or established master funds that have one or more CIMA-regulated feeder funds and hold investments and conduct trading activities. Recent changes to the Mutual Funds Act means that certain mutual funds, which were previously exempted from registration with CIMA under section 4(4) of the Mutual Funds Act because they had 15 investors or less, the majority of whom have the power to appoint or remove the operators of the investment fund (the operator being the directors, the general partner or the trustee, as is relevant given the legal vehicle used for the fund), are no longer exempt from registration with CIMA. These limited investor funds are now required to be registered with, and are regulated by, CIMA.

Each CIMA-registered mutual fund is required to have its accounts audited annually by a firm of auditors on the CIMA-approved list of auditors and file such audited accounts with CIMA within six months of the end of each financial year of the mutual fund (along with a financial annual return in CIMA's prescribed form).

Mutual funds that are established for a sole investor and do not involve the pooling of investor funds fall outside the regulatory framework of the Mutual Funds Act. Nonetheless, a mutual fund with a single investor can apply for voluntary registration to, among other things, benefit from the status of being a regulated fund.

Cayman Islands laws and regulations do not impose restrictions on, or prescribe rules for investment strategies of open-ended funds, or their use of leverage, shorting or other techniques.

Closed-ended funds

The Private Funds Act requires the registration of closed-ended funds (typically, investment funds that do not grant investors with a right or entitlement to withdraw or redeem their shares or interests from the fund upon notice) with CIMA. The Private Funds Act applies to private equity funds, real estate funds, and other types of closed-ended funds set up as Cayman Islands limited partnerships, companies (including SPCs), unit trusts and limited liability companies. The Private Funds Act also applies to non-Cayman Islands private funds carrying on business or attempting to carry on business in or from the Cayman Islands.

In addition to registration with CIMA, the Private Funds Act also imposes the following regulatory requirements to be met by private funds.

Audit

Each private fund is required to have its accounts audited annually by a firm of auditors on the CIMA-approved list of auditors and file such audited accounts with CIMA within six months of the end of each financial year of the private fund (along with a financial annual return in CIMA's prescribed form).

Valuation of assets

A private fund must have appropriate and consistent procedures for the purposes of proper valuations of its assets, which ensures that valuations are conducted in accordance with the requirements in the Private Funds Act. Valuations of the assets of a private fund are required to be carried out at a frequency that is appropriate to the assets held by the private fund and, in any case, on at least an annual basis.

Safekeeping of fund assets

The Private Funds Act requires a custodian: (1) to hold the private fund's assets that are capable of physical delivery or capable of registration in a custodial account except where that is neither practical nor proportionate given the nature of the private fund and the type of assets held; and (2) to verify title to, and maintain records of, fund assets.

Cash monitoring

The Private Funds Act requires a private fund to appoint an administrator, custodian or another independent third party (or the manager or operator of the private fund):

- to monitor the cash flows of the private fund;
- to ensure that all cash has been booked in cash accounts opened in the name, or for the account, of the private fund; and
- to ensure that all payments made by investors in respect of investment interests have been received.

Identification of securities

A private fund that regularly trades securities or holds them on a consistent basis must maintain a record of the identification codes of the securities that it trades and holds and make this available to CIMA upon request.

Directors of mutual funds structured as exempted companies, managers of investment funds structured as LLCs and directors of general partners of investment funds structured as an exempted limited partnership (in each case, wherever in the world these persons are located, not just to Cayman Islands-based directors) regulated by CIMA are required to register with CIMA under the Directors Registration and Licensing Act (DRLA). The DRLA enables CIMA to verify certain information in respect of directors or managers of CIMA-registered funds. There is currently no requirement for registration of directors with CIMA under the DRLA who are directors of closed-ended funds that fall within the scope of the Private Funds Act. However, this may change in the future.

All investment funds are required to comply with Cayman Islands anti-money laundering legislation and regulations, including appointing an anti-money laundering compliance officer, a money laundering reporting officer, and a deputy money laundering reporting officer. The Cayman Islands government and CIMA actively work with the European Union, the Organisation for Economic Co-operation and Development, the Financial Action Task Force and regulators in numerous jurisdictions to observe and maintain international standards on transparency and good corporate governance.

Authorisation

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

The statutory and regulatory frameworks that apply to investment funds in the Cayman Islands do not distinguish between retail funds and non-retail funds. All mutual funds (except for those that are single investor funds) are required to be registered with CIMA and fall within its regulatory framework. Closed-ended funds that fall within the scope of the Private Funds Act are required to be registered with, and regulated by, CIMA.

Marketing

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

Investment funds (whether structured as an exempted company or a LLC) are restricted from making an offer of shares of the company or interests of the LLC to the public in the Cayman Islands to subscribe for such securities unless those securities are listed on the Cayman Islands Stock Exchange. There are no similar restrictions in the laws governing limited partnerships or unit trusts. The term 'public in the Islands' excludes certain entities and residents, including other Cayman Islands exempted companies, LLCs, exempted limited partnerships, any exempted or ordinary non-resident companies, foreign companies registered in the Cayman Islands and foreign limited partnerships. It also excludes sophisticated persons and high net worth persons (as defined under the Securities Investment Business Act (the SIB Act)), which means that making an offer of securities to 'private funds' (as defined in the Private Funds Act) in the Cayman Islands is not restricted. Private funds would most likely qualify as sophisticated persons or high net worth persons, or both. An overseas investment fund that wishes to make an offering of its securities to the public in the Cayman Islands will need to either (1) register with CIMA as a mutual fund under the Mutual Funds Act or a private fund under the Private Funds Act or (2) market its securities through a person who is appropriately licensed or authorised by CIMA under the terms of the SIB Act (provided that the securities being offered to the public in the Cayman Islands are listed on a stock exchange approved by CIMA or the investment fund is regulated by a recognised overseas regulatory authority approved by CIMA). However, there is no legal requirement for a local entity to be involved in the fund marketing process.

Ownership restrictions

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

The legal requirement to be an eligible investor in a registered mutual fund with more than 15 investors is a minimum initial investment of US\$100,000 (or its equivalent in any other currency); otherwise no other investor-qualification criteria apply to such funds. This minimum initial investment requirement does not apply to registered mutual funds with 15 or fewer investors and also does not apply to closed-ended funds falling within the scope of the Private Funds Act.

Managers and operators

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

There is no requirement for the manager of a Cayman Islands fund to be resident or domiciled in the Cayman Islands. There are no Cayman Islands laws that seeks to regulate overseas managers of Cayman investment funds. Fund managers established in the Cayman Islands need to comply with the provisions of the Securities Investment Business Act and such fund managers must either be licensed or registered with the CIMA. There are also economic substance requirements which must be complied with.

Directors of mutual funds structured as exempted companies, managers of investment funds structured as LLCs and directors of general partners of investment funds structured as exempted limited partnerships (in each case, wherever in the world these persons are located, not just to Cayman Islands-based directors) regulated by CIMA are required to register with CIMA under the DRLL. The DRLL enables CIMA to verify certain information in respect of directors or managers of CIMA-registered funds. There is currently no requirement for registration of directors with CIMA under the DRLL who are directors of closed-ended

funds that fall within the scope of the Private Funds Act. However, this may change in the future.

Tax treatment

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

Cayman Islands tax treatment is the same for both retail funds and non-retail funds. The Cayman Islands has no direct taxation of any kind. There are no income, corporation, capital gains or withholding taxes or death duties. It is possible for all types of Cayman legal structures (exempted company, LLC, unit trust and ELP) to apply to the Cayman Islands government for a tax undertaking that the legal structure will not be subject to direct taxation, for a minimum period, which in the case of a company is 20 years, and in the case of an LLC, unit trust and an ELP is 50 years.

Asset protection

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

There are no legal requirements in the Cayman Islands for assets of a mutual fund to be held by a separate custodian located in the Cayman Islands. Closed-ended funds that fall within the scope of the Private Funds Act are required to appoint a custodian (1) to hold the private fund's assets that are capable of physical delivery or capable of registration in a custodial account except where that is neither practical nor proportionate given the nature of the private fund and the type of assets held; and (2) to verify title to, and maintain records of, fund assets. However, there is no legal requirement for the custodian to be located in the Cayman Islands.

Governance

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

The Mutual Funds Act (for open-ended funds) and the Private Funds Act (for closed-ended funds) are the two main statutes relevant to the regulation of investment funds in the Cayman Islands. CIMA is the regulatory body responsible for compliance with these laws and related regulations and has broad powers of enforcement. Depending on the legal structure of the investment fund, there are also various continuing filing obligations and annual registration fees to be paid.

Reporting

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

Mutual funds regulated by CIMA must, as long as there is a continuing offering, update their offering documents and prescribed particulars within 21 days of any material change, and are required to file the updated offering document or the prescribed particulars with CIMA within this 21-day period.

A private fund is required under the Private Funds Act to notify CIMA of any change that materially affects any information submitted to CIMA and any change of its registered office or the location of its principal office.

The Private Fund will have 21 days after making the change or becoming aware of the change to file details of the change with CIMA.

All funds regulated by CIMA (mutual funds and private funds) are required to have their accounts audited annually, and these audited financial statements must be filed with CIMA within six months of the year end of the fund, along with a financial annual return form including prescribed details, signed by a director. These audited financial statements must be signed off by a CIMA-approved Cayman Islands-based audit firm.

SEPARATELY MANAGED ACCOUNTS

Structure

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

Separately managed accounts are not typically structured using Cayman entities. The investment manager entity that provides managed account services may itself be a Cayman-domiciled entity and be regulated by the Cayman Islands Monetary Authority.

Key legal issues

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

There are no specific Cayman Islands legal requirements to be determined when structuring a separately managed account unless the managed account is structured using a Cayman legal vehicle, in which case the same issues applicable to a mutual fund or a private fund may apply.

Regulation

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

The manager or entity marketing the separately managed account is regulated in the same manner as fund management.

GENERAL

Proposed reforms

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

The introduction of (1) the requirement to register with the Cayman Islands Monetary Authority (CIMA), mutual funds that were previously exempted from registration, and (2) the registration of private funds with CIMA under the terms of the Private Funds Act has expanded the regulatory landscape for Cayman investment funds considerably. It is anticipated that there will be accompanying regulations that will set out in more detail how this expanded regulatory landscape will apply.

Public listing

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

The listing of investment funds on the Cayman Islands stock exchange covers all types of legal vehicles (eg, exempted company (including segregated portfolio companies), limited liability company, unit trust or limited partnership) and every type of strategy (closed-ended funds, open-ended funds, stand-alone and master-feeder funds, real estate funds or umbrella funds) can apply to be listed. Funds based in both the Cayman Islands and in other jurisdictions are permitted under the listing rules to apply.

Overseas vehicles

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

Yes.

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Foreign investment

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

There are no special rules.

Funds investing in derivatives

40 | Are there any special requirements in your jurisdiction relating to funds investing in derivatives?

Please see www.lexology.com/gtdt.

UPDATE AND TRENDS

Recent developments

41 | Are there any other current developments or emerging trends in your jurisdiction that should be noted? Please include reference to world-wide regulatory concerns, such as restrictions on foreign ownership in strategic industries, high-frequency trading, commodity position limits, capital adequacy for investment firms and 'shadow banking'.

There are no updates at this time.

Coronavirus

42 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

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* The information in this chapter was verified between May and June 2020.

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