

A Guide to Cayman Funds



Dillon Eustace

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Introduction

Dillon Eustace LLP in Cayman.

Dillon Eustace offer local Cayman Islands law advice and company secretarial services to local and multi-national financial service entities.

Our Cayman Islands legal team provides the full range of client-focused Cayman legal services associated with an established firm operating in the world's leading offshore jurisdiction. We offer comprehensive expertise and experience of both offshore and onshore practice, advising on: hedge funds; venture capital and private equity funds; securitisation and structured finance; capital markets; asset finance; debt and fund listing; fund finance; M&A; company management and restructuring; joint ventures; shareholder agreements; partnership agreements; commercial contracts; corporate governance; regulatory compliance; migrations; and purpose trusts.

Our clients include some of the leading international banks, investment managers, venture capitalists, pharmaceutical companies, investment advisers, institutional investors, family offices, insurers, trustees, administrators, custodians and other financial service providers. We have built up strong working relationships with a global network of legal and professional contacts which enables us to offer our clients comprehensive specialist advice as required.

DE (Cayman) Limited (DECL) is a leading provider of formation agency, registered office and registered agent services to companies and partnerships in the Cayman Islands. Our highly experienced corporate services professionals offer a high-speed service underpinned by a keen understanding of modern business demands. DECL holds a full companies management licence issued by the Cayman Islands Monetary Authority. We work closely with the Dillon Eustace Cayman and Ireland legal teams to provide seamless and efficient high quality client services.

DECL's secretarial services offer a comprehensive collation and report management service which considerably enhances corporate governance and encourages the adoption of best practice standards. We also provide access to market leading information technology tools to manage board papers and workflows.

For further information on DECL's company management services, see Cayman Registered Office Services and Cayman Corporate Secretarial Services.

Cayman for Funds

Cayman is one of the leading international domiciles for hedge and private funds offering a variety of fund structures and it has long been a favoured domicile for Japanese asset managers. Cayman regulatory requirements vary depending on the particular fund structure and the targeted investor profile for a particular project. There are no restrictions imposed in terms of strategy with Cayman funds being suitable for all types of hedge and private funds.

In addition to being a leading international domicile for funds, Cayman is also one of the main service locations for funds offering leading service providers for legal, administration, audit, corporate and secretarial services. Many of these Cayman funds are also serviced by administrators based in leading European domiciles including Ireland.

Regulatory Regime

The Cayman Islands Monetary Authority ("CIMA") is the competent authority responsible for the initial authorisation and on-going supervision of all registered and licenced Cayman hedge fund structures and registered private fund structures. Subject to very limited exceptions, all open-ended funds and all closed-ended funds must register with CIMA.

The legislative basis for funds in the Cayman Islands is found in the Mutual Funds Act (Revised), the Private Funds Act (Revised), the Securities Investment Business Act (Revised), the Companies Act (Revised), the Limited Liability Companies Act (Revised), the Partnership Act (Revised), the Exempted Limited Partnership Act (Revised), the Trusts Act (Revised) and the Directors Registration and Licencing Act (Revised).

The categories of regulation applicable to funds in Cayman are based on certain factors including:

- the liquidity of the fund's interests;
- the type of interests issued by the fund;
- the extent of control devolved to the fund's investors;
- the minimum subscription amount applicable to an investment in the fund;
- whether and where the fund's interests are listed;
- the location of the principal office of the fund; and
- the number of investors in the fund.

Timeframe for Launch

No regulatory review is required of the constitutional or offering documents of a registered hedge fund or a registered private fund. This allows for funds to commence trading as soon as:

- the terms of their constitutional and, if applicable, offering documents are settled;
- the form of their service providers' agreements are settled; and
- the offering document or summary of terms and certain prescribed particulars are filed with CIMA.

Registered private funds are able to accept commitments up to 21 days' prior to applying to be registered with CIMA but need to be registered with CIMA before drawing down commitments for investment purposes. Generally CIMA will confirm registration of a registered hedge fund or a registered private fund on the same day that the completed registration application is submitted.

Principal Legal Structures

The legal structures within which Cayman regulated funds can be housed are:

- companies;
- LLCs;
- limited partnerships; and
- unit trusts.

Companies can also be registered as segregated portfolio companies with statutory based segregation of assets and liabilities between the segregated portfolios established by

the company making them an ideal structure for umbrella funds and platform structures.

Liquidity Options

Cayman funds can be structured as open-ended or closed-ended schemes and in either case can make redemptions in kind by transferring underlying assets to investors on voluntary or compulsory redemption.

Where a Cayman fund is open ended, the following liquidity control mechanisms can be facilitated:

- redemption gates;
- deferred redemption payments;
- redemption holdbacks; and
- side pockets.

Service Providers

The use of managers, administrators, custodians and/or prime brokers for Cayman funds is well established and many leading names in these fields are available to provide the necessary services whether from within or from outside Cayman. The following service providers to a registered hedge or private fund will need to be located in Cayman:

- auditors approved CIMA;
- a Cayman regulated trustee (where the fund is a Cayman law governed unit trust);
- a registered office (where the fund is a company, LLC or limited partnership).





Why Cayman?

Tax Neutrality

The primary reason for Cayman's popularity is its tax neutral platform for investment structures. Using a Cayman fund will not add any further tax layers to those imposed in the jurisdictions where investments are held and investors are domiciled.

Familiarity

Investors, managers and service providers are confident in and familiar with and in many cases prefer dealing with Cayman Islands fund structures easing the due diligence processes involved in establishing your fund, taking in investors and trading in underlying assets.

Legal Framework

Cayman has a common law legal system which is based on the internationally recognised standard of English law. Cayman makes use of specialised commercial court judges and has the Privy Council (which shares some common members with the English Supreme Court) as its final appellate court.

Regulatory Framework

Cayman has a regulatory framework, including anti-money laundering, counter terrorism, counter proliferation financing and tax information exchange regimes which meet or exceed international standards.

Proven Track Record

Cayman has a proven track record of a successful funds industry which has operated for more than 30 years.

Service Providers

Cayman has many well established and respected household names among its service providers many of whom have been operating in Cayman for more than 30 years.

Political and Economic Environment

Cayman has a stable political and economic environment with its legal framework being based on the English common law system, issues of defence being in the hands of the English government and with a representative of the British Crown having oversight of the Islands as Governor.

Regulatory Categorisations

The Cayman Islands regulatory regime makes a primary distinction between open ended hedge funds and closed ended private funds:

- an open-ended fund is one which provides for the redemption of its equity interests at the option of its investors; and
- closed-ended funds are funds whose interests are not redeemable or re-purchasable at the option of its investors.

Registered Hedge Funds

A registered hedge fund under the Mutual Fund Act (Revised) is a fund which is open-ended in respect of redemptions and which either has:

- a minimum applied to the aggregate equity interests purchasable in the fund set at US\$100,000 or its equivalent in any other currency; or
- its equity interests listed on a specified stock exchange¹.

A registered hedge fund is required to file its offering document and certain prescribed particulars with CIMA and to pay a fee on registration and an annual fee thereafter. A registered hedge fund is subject to the supervision of CIMA and will be required to appoint CIMA registered or licensed directors and a CIMA approved auditor. The appointed auditor will need to be based in Cayman and will be required to monitor the fund, conduct an annual audit and file an annual report with CIMA. A registered hedge fund will also need to appoint anti-money laundering compliance officers. Single investor hedge funds that are open ended are not required to register with CIMA unless they are master funds with at least one Cayman feeder hedge fund.

Limited Investor Funds

A limited investor fund under the Mutual Fund Act (Revised) is an open ended hedge fund whose equity interests are held by not more than fifteen investors, a majority in number of whom are capable of appointing or removing the directors, managing members, general partner or trustee of the fund. A limited investor fund is subject to the supervision of CIMA and will be required to appoint CIMA registered or licensed directors

and a CIMA approved auditor. The appointed auditor will need to be based in Cayman and will be required to monitor the fund, conduct an annual audit and file an annual report with CIMA. A registered fund will also need to appoint anti-money laundering compliance officers. Single investor funds that are open ended are not required to register with CIMA unless they are master funds.

Private Funds

A private fund under the Private Funds Act (Revised) is a fund whose equity interests are not redeemable or re-purchasable by the holder and whose investments are managed as a whole by or on behalf of its directors, managing members, general partner or trustee directly or indirectly. A private fund is subject to the supervision of CIMA and will be required to appoint a CIMA approved auditor. The appointed auditor will need to be based in Cayman and will be required to monitor the fund, conduct an annual audit and file an annual report with CIMA. A private fund will not need to have its directors registered or licenced by CIMA but will need to appoint anti-money laundering compliance officers. Closed ended funds that are excluded from the regulatory requirements of the Private Funds Act (Revised) include single investor private funds, proprietary vehicles, debt issuers, joint ventures and private funds listed on certain approved stock exchanges.

Licensed Funds and Administered Funds

An open ended hedge fund which:

- has more than fifteen investors or has investors who do not control the appointment or removal of its operators;
- has a minimum subscription amount of less than US\$100,000 or its currency equivalent; and
- whose securities are not listed on a specified stock exchange, will need to be licenced by CIMA.

The licencing process requires the hedge fund to satisfy CIMA as to the reputation of its promoter and the expertise of its administrator, to file its offering document and certain prescribed particulars with CIMA and to pay a fee on registration and an annual fee thereafter. An alternative

¹ A US licensed, EU regulated, Canadian licensed exchange, a full member of the World Federation of Exchanges, the Cayman Islands Stock Exchange or any other exchange approved by the Cayman Islands Monetary Authority. An indicative list can be found at: https://www.cima.ky/upimages/regulatorymeasures/ListofApprovedStockExchanges_1544106498_1599563212.pdf

to satisfying CIMA as to the reputation of the hedge fund's promoter and expertise of its administrator is to appoint an administrator which is licenced under the Mutual Funds Act (Revised) to provide the principal office of the hedge fund in Cayman and to apply for registration of the hedge fund with CIMA, in these circumstances the hedge fund will need to satisfy the licensed administrator as to the reputation of its promoter. A licensed or administered hedge fund will be subject to the supervision of CIMA and will be required to appoint CIMA registered or licensed directors and a CIMA approved auditor. The appointed auditor will need to be based in Cayman and will be required to monitor the fund, conduct an annual audit and file an annual report with CIMA. A licensed or administered fund will also need to appoint anti-money laundering compliance officers.

Cayman Master Feeder Structures

Cayman master-feeder structures using Cayman and non-Cayman domiciled feeder funds investing via a Cayman

domiciled master fund into the underlying assets are often employed where a manager:

- needs to separate distinct pools of investors into different legal structures for regulatory, reporting and/or tax reasons; and
- wants to avail of economies of scale by feeding several funds into a single master fund.

A master fund which is open-ended in respect of redemptions and which has at least one investor which is a Cayman registered or licensed hedge fund will need to file its offering document, if any, and certain prescribed particulars with CIMA and pay a fee on registration and an annual fee thereafter. This category of master fund will be subject to the supervision of CIMA and will be required to appoint CIMA registered or licensed directors and a CIMA approved auditor. The appointed auditor will need to be based in Cayman and will be required to monitor the fund, conduct an annual audit and file an annual report with CIMA. A registered master fund will also need to appoint anti-money laundering compliance officers.



Authorisation Process

Timing

For registered hedge funds and private funds there is no requirement for pre-approval from CIMA. As soon as the fund's service providers are appointed and its offering documents or a summary of terms, prescribed particulars and registration fee have been filed with CIMA together with letters from the fund's auditors and administrator confirming their consent to act, the fund is ready to take in investors and start investing. This will generally take around 2-3 months but this period can be substantially contracted if all parties are committed to a shorter time frame. Registered private funds are able to accept commitments up to 21 days' prior to applying to be registered with CIMA but need to be registered with CIMA before drawing down commitments for investment purposes. Generally CIMA will confirm registration of a registered hedge fund or a registered private fund on the same day that the completed registration application is submitted.

For licenced funds the approval of the fund's promoters will take at least three weeks for CIMA to process and the licence application process will take at least four weeks. These timescales may be extended where requests for clarification or additional documentation are made by CIMA. Completion of the application process for these approvals and finalisation of offering and service provider agreements will generally mean a time frame of at least 4-5 months for a licenced fund.

Operational Issues

Some of the main operational issues for Cayman funds are outlined below:

Offering Document

A Cayman registered or licensed hedge fund must issue an offering document unless CIMA exempts the fund from this requirement. The offering document must describe the equity interests of the hedge fund in all material respects and contain such other information as is necessary to enable a prospective investor to make an informed decision as to whether or not to subscribe for or purchase the fund's equity interests and must comply with CIMA's rule on the contents of offering documents for registered hedge funds which generally reflect market standards. Any material change affecting the terms of the offering document of a registered or licensed hedge fund during any period when there is a

continuing offering of its equity interests must be updated in the offering document or a supplement thereto and filed with CIMA together with amended prescribed particulars where applicable. Registered master funds are required to file prescribed particulars with CIMA and, where they issue an offering document will also be required to file their offering document.

Cayman private funds are not required to issue an offering document but generally, unless the terms of the offering are reflected entirely in the fund's constitutional documents, a promoter will want to issue an offering document as a clear statement of the offering terms including the investment objective, expertise and obligations of the fund's counterparties, net asset value calculation policy, risk factors, fees, expenses, tax structuring, subscription and redemption procedures, selling restrictions and limits on the liability of the fund's counterparties. Any material change affecting the terms of the offering document of a private fund, or where applicable its constitutional documents or term sheet, during any period when there is a continuing offering of its equity interests must be updated in the offering document or a supplement thereto and filed with CIMA together with amended prescribed particulars where applicable.

Valuation and Pricing

A registered hedge fund is required to maintain a net asset calculation policy that ensures that its net asset value is fair, complete, neutral and free from material error and is verifiable. The net asset value calculation policy is required to be based on generally accepted accounting principles of a non-high risk jurisdiction (including IFRS and US, Japanese and Swiss GAAP) and consistent with the standards used in the hedge fund's audit. The net asset value calculation policy must be disclosed in the hedge fund's offering document, require calculations of net assets values at least quarterly, state how and when the net asset value will be published and identify pricing sources. Pricing models may be used for hard to value securities for which there is no observable market price provided that they are generally applied consistently and that any deviations are disclosed to investors. Where a fund's manager or its operators calculate or assist in the calculation of the hedge fund's net asset value this should be disclosed in the offering memorandum with an explanation of why another service provider could not calculate the net asset value.

A registered private fund is required to establish, implement, and maintain a net asset calculation policy that ensures that its net asset value is fair, reliable, complete, neutral and free from material error and is verifiable. The net asset value calculation policy is required to be calculated in accordance with generally accepted accounting principles of a non-high risk jurisdiction (including IFRS and US, Japanese and Swiss GAAP) and consistent with the standards used in the private fund's audit. The net asset value calculation policy must be disclosed in the private fund's constitutional documents or marketing materials, require calculations of net assets values at least annually, state how and when the net asset value will be published and identify pricing sources. Pricing models may be used for hard to value securities for which there is no active market price provided that they are capable of practical implementation.

Segregation of Assets

Registered hedge funds are required to appoint a service provider to ensure the safekeeping of their financial assets and to maintain procedures to ensure appropriate segregation. The fund's portfolio must be segregated and accounted for separately from any assets of any service provider and the fund must ensure that none of its service providers use the fund's portfolio to finance their own or any other operations. CIMA's rule on segregation of assets clarifies that it is not intended to prohibit re-hypothecation of a hedge fund's assets subject to appropriate disclosure to investors. The rule also requires registered hedge funds to verify that the fund holds title to its assets and to maintain a record of those assets and that these roles be carried out by an administrator, other independent third party or, subject to the management and disclosure of potential conflicts of interest, the fund's operator or manager or their affiliates.

Registered private funds are required to ensure that their assets are segregated and accounted for separately from that assets of their manager, operator and custodian and to maintain procedures to ensure appropriate segregation. A registered private fund must ensure that its manager, operator or custodian does not use its assets to finance their own or any other operations. The transfer and reuse of assets as consented to by the fund is permitted provided that a description of the arrangements and the maximum permitted level of transfer and reuse are disclosed to investors. Registered private funds are required to maintain the services of a custodian or other specified party to ensure safekeeping

of their assets unless the fund notifies CIMA that such an appointment of a custodian is not practical or proportionate. A custodian or other appropriate service provider should in all cases be appointed to verify that the fund holds title to its assets. Registered private funds are required to appoint an administrator or other specified party to monitor their cash flows and if the fund regularly trades securities it is required to maintain records of identification codes of those securities.

Financial Reporting

All Cayman funds are required to have their accounts audited annually by an auditor approved by CIMA and based in Cayman and are required to send their audited accounts to CIMA within six months of the end of the financial year to which they relate. An auditor to a Cayman registered hedge fund or private fund is also required to report concerns arising out of its audit review to CIMA.

Anti-Money Laundering

Cayman funds are required to comply with Cayman anti-money laundering laws and regulations which in certain circumstances permit reliance on the anti-money laundering procedures of the fund's service providers. A Cayman fund will generally delegate compliance with applicable anti-money laundering laws and regulations to its administrator and/or or investment manager although the ultimate responsibility for compliance with anti-money laundering laws and regulations remains with the fund and its directors. All Cayman funds required to appoint experienced compliance professionals with specific knowledge of the Cayman Islands anti-money laundering regime to the roles of anti-money laundering compliance officer, money laundering reporting officer and deputy money laundering reporting officer. These officers will generally be provided by the fund's administrator but can also be sourced from independent third parties and will assist the fund in ensuring compliance with the Cayman anti-money laundering regime.

FATCA and CRS

Cayman funds are required to report certain information about their investors who have a connection with the US or any jurisdictions that are signatories to the CRS regime on an annual basis to the Cayman Tax Information Authority. The Cayman Tax Information Authority will then provide such information to the tax authorities in each such jurisdiction. A Cayman fund may also be required to register directly with

the US Inland Revenue Service to obtain a Global Intermediary Identification Number commonly referred to as a GIIN. These services will generally be provided by the fund's administrator but can also be sourced from independent third parties.

Post-Authorisation Amendments

Whether a Cayman hedge fund is structured as a company, limited partnership, unit trust or LLC the voting rights attached to the interests issued to investors can be structured so as to allow the fund to make certain changes to its offering terms without the need to obtain investor consent. An exception to this general approach arises in a fund structured as a company where the rights attaching to an investor's shares are varied as a result of the changes to the offering terms. In any case where voting, participation or redemption rights are affected it may be necessary to obtain investor consent prior to implementing those changes. Generally the approach to the interpretation of what is to be considered a right attached to an investor's shares is a restrictive one.

In most other cases a decision needs to be made as to whether investors are likely to consider the proposed changes material. If they are and the fund is open ended then it is prudent to give all investors prior notice of the changes and

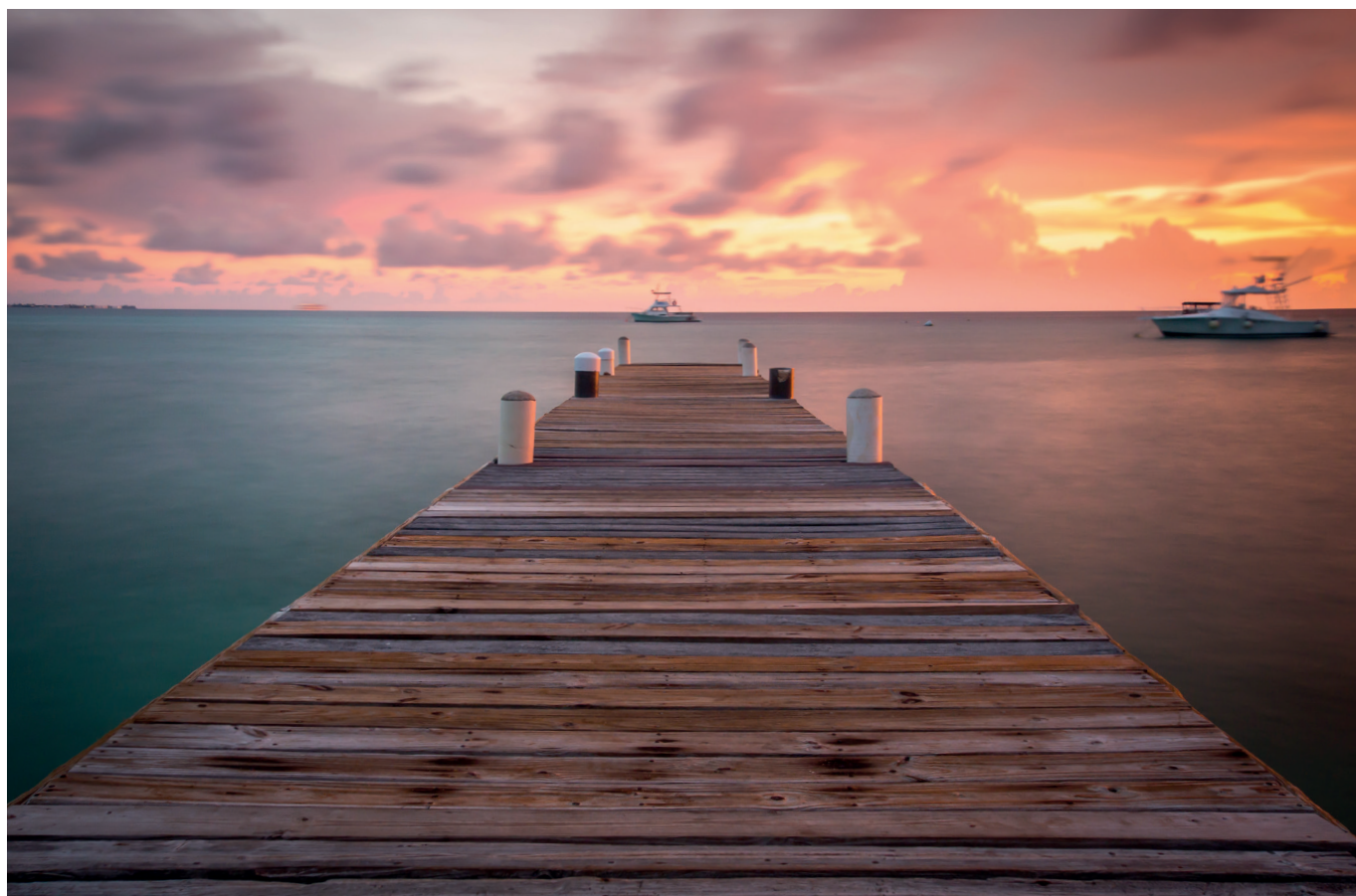
the opportunity to redeem their interests before the changes are made. If changes are considered to be immaterial the fund and its manager may feel that they can be made without prior notice and that notice of the changes can be sent to all investors after they have been implemented.

Where a Cayman fund's interests are listed on a stock exchange the rules of that exchange may require specific notices or consents to be obtained before certain changes can be made to the offering terms of the fund's interests.

For closed ended funds the terms of their constitutional documents will generally permit changes which don't affect their investor's voting rights, allocations of profits or distribution rights to be made without the need for investor consent.

Enforcement

CIMA has the power to impose administrative fines for breaches of prescribed provisions of the Mutual Funds Act (Revised) and the Private Funds Act (Revised) ranging from US\$ 6,100 for minor breaches to US\$1,220,000 for very serious breaches. Where administrative fines are imposed CIMA will initially deliver a breach notice giving a 30 day period to reply and, if applicable, rectify a minor breach.



Available Legal Structures

Cayman Islands funds are available as companies (including segregated portfolio companies), LLCs, limited partnerships and unit trusts.

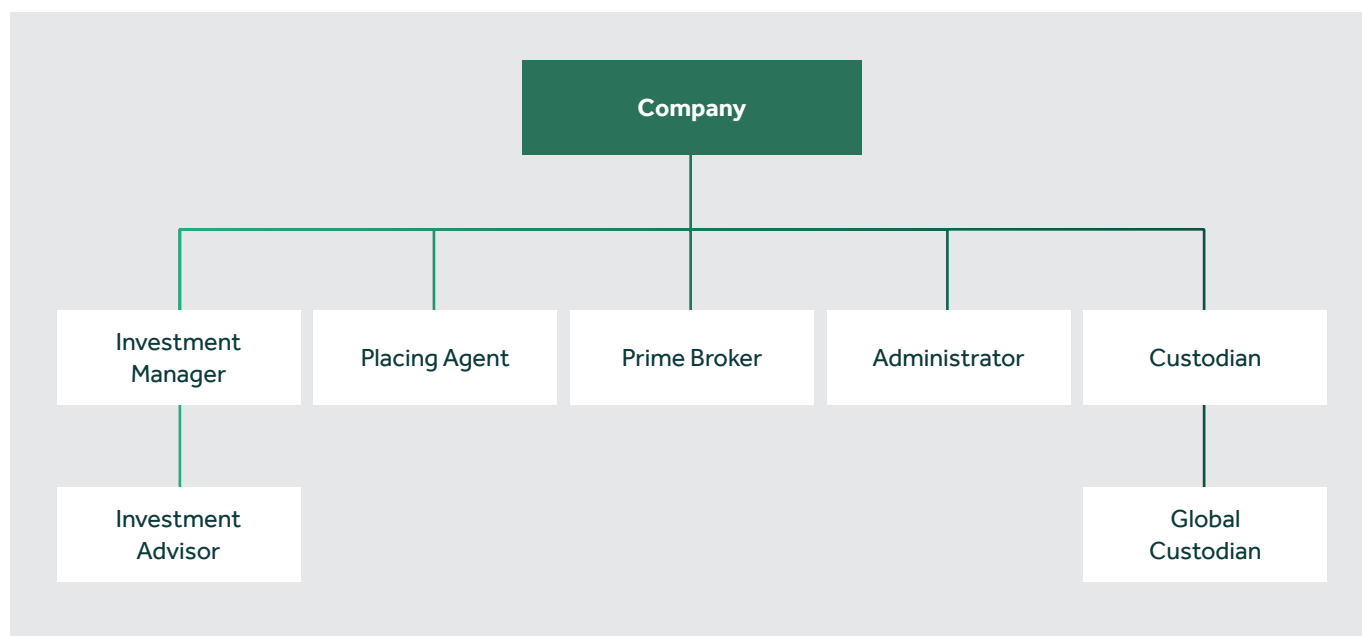
Choice of Legal Structure

The choice of legal structure for a fund will usually depend on a number of issues, including:

- investor familiarity;
- investor capacity to invest;
- borrowing/leverage proposals; and
- operational flexibility.

Some examples of a Cayman company, LLC, limited partnership and unit trust structured as a standalone fund are set out below.

Company Structure



Companies are corporate vehicles with their own legal personality. Under the Companies Act (Revised) there is no distinction made between a public and private company. Companies are corporate vehicles with their own legal personality. Under the Companies Act (Revised) there is no distinction made between a public and private company.

The constitutive document for a company is its Memorandum and Articles of Association and ultimate management authority resides with a board of directors. Two directors, each of which are CIMA registered or licensed, must be appointed for a registered or licensed hedge fund but neither of them need be resident in Cayman.

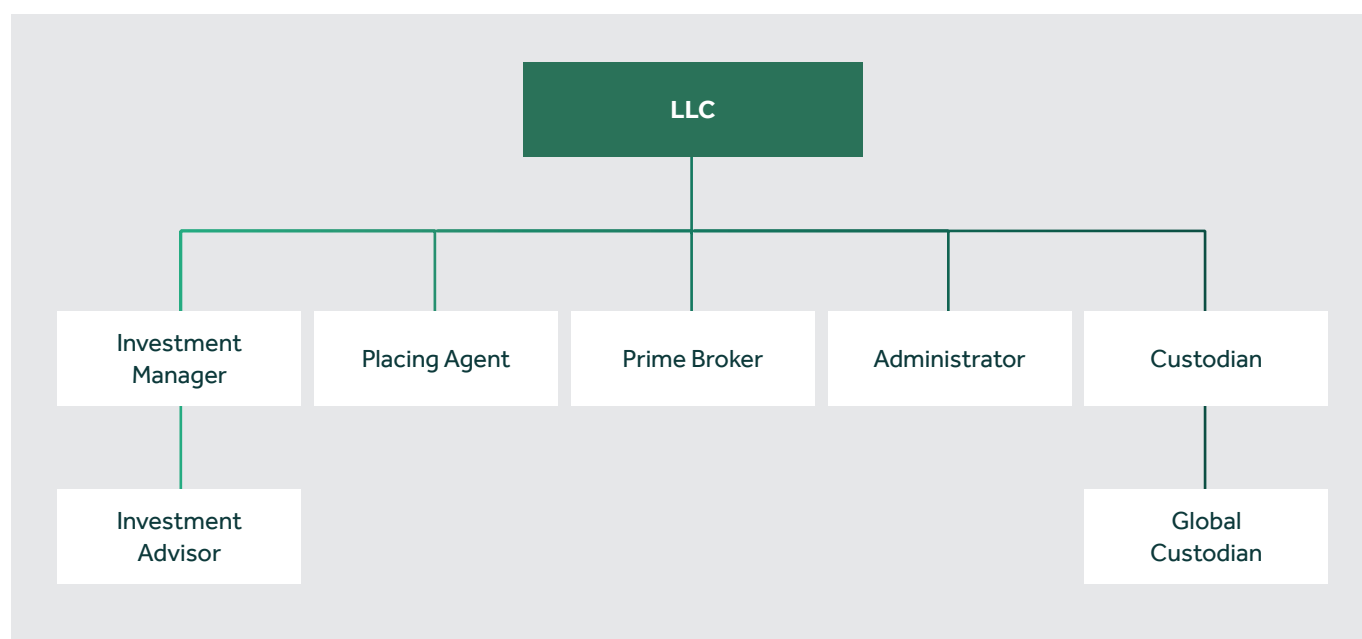
Companies issue shares to investors which do not represent

a legal or beneficial interest in the company's assets, those assets being legally held by the custodian or other service provider and beneficially held by the company or alternatively held directly by the company.

Shares in a Cayman company can be issued as voting and/or non-voting shares. Where appropriate a company might issue non-voting shares to its investors and issue voting shares only to its investment manager in order to retain flexibility to make non-material amendments to the fund structure without the need to obtain investor consent.

Funds structured as companies will enter into contracts themselves as corporate entities, principally with their investment manager, administrator and custodian.

LLC Structure



LLCs are corporate vehicles with their own legal personality. Under the Limited Liability Companies Act (Revised) there is no distinction made between a public and private LLC.

The constitutive document for a LLC is its LLC Agreement and ultimate management authority resides with its managers. Two managers, each of which are CIMA registered or licensed, must be appointed for a registered or licensed hedge fund but neither of them need be resident in Cayman.

LLCs issue interests to investors which do not represent a legal or beneficial interest in the LLC's assets, those assets being legally held by the custodian or other service provider and beneficially held by the LLC or alternatively held directly by the LLC.

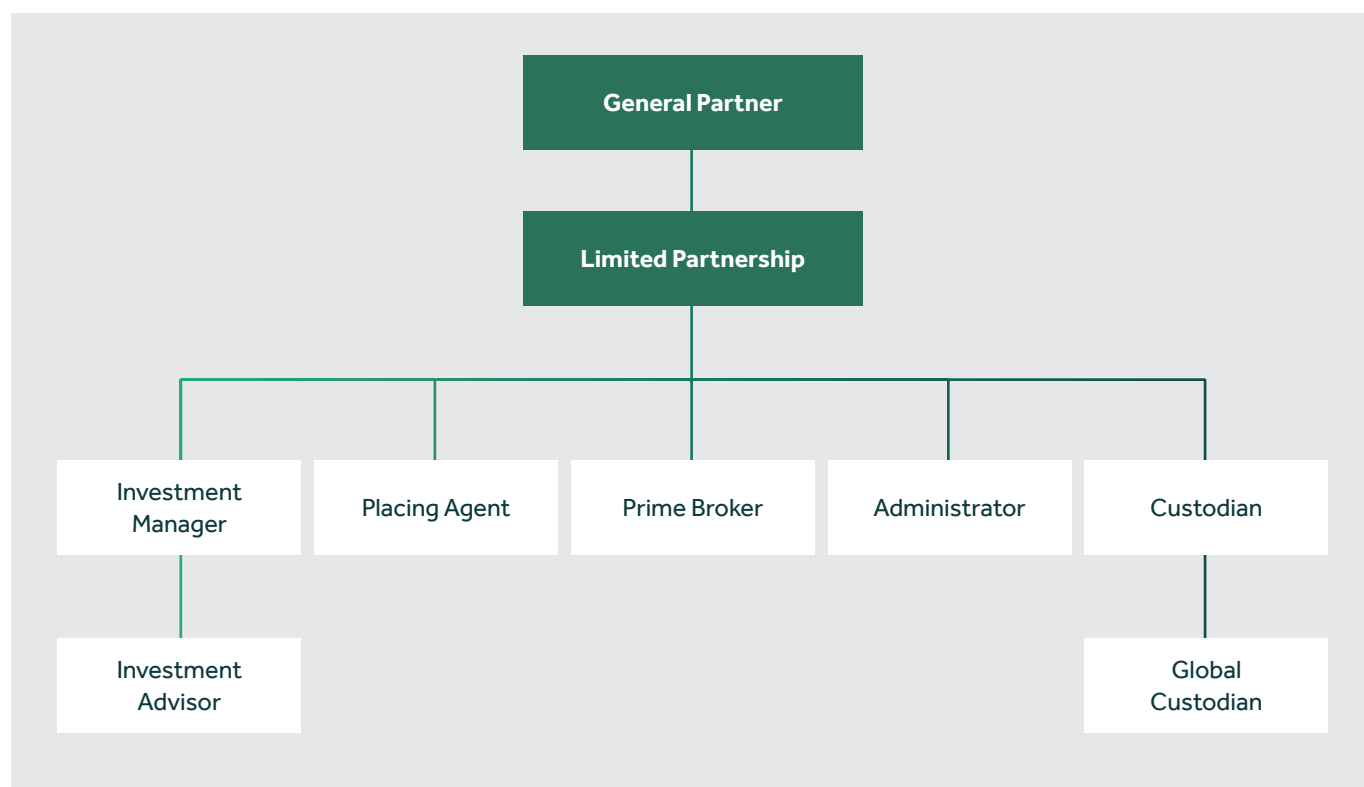
Rights attached to investor interests in a Cayman LLC are entirely flexible and can be structured in any way that might suit the particular fund.

Funds structured as LLCs will enter into contracts themselves as corporate entities, principally with their investment manager, administrator and custodian.

The Cayman LLC has been successfully used as a Cayman fund structure but, as is the case for the US LLC, it is more often seen as a general partner or investment manager within a Cayman fund structure.



Limited Partnership Structure



Cayman limited partnerships are contractual arrangements created under a limited partnership agreement made between the general partner and any number of limited partners. Limited partnerships do not have their own legal personality and the general partner enters into contracts on behalf of the limited partnership in its capacity as general partner.

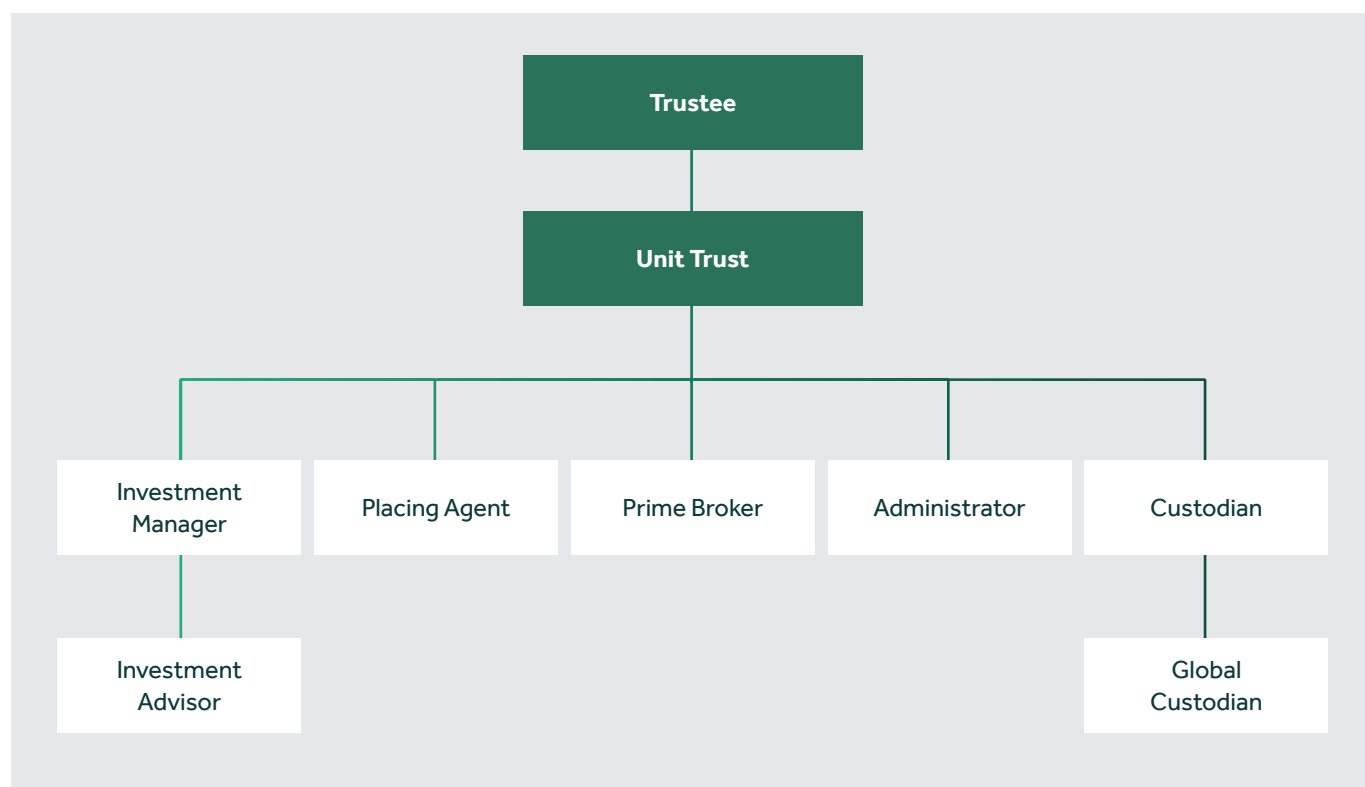
The limited partners generally receive partnership interests which entitle them to a share in the performance of the limited partnership while the general partner has a fee interest in the limited partnership and acts in a management role. The assets and liabilities of the limited partnership and the profits derived from those assets are held on trust by the general partner as assets of the limited partnership in accordance with the terms of the limited partnership agreement.

Cayman limited partnerships are subject to the Partnership Act (Revised) and the Exempted Limited Partnership Act (Revised). Generally these laws are permissive and the contractual arrangements within a Cayman limited partnership are largely down to negotiations between its manager and its key investors. Partnership interests can be issued in different classes to apply different fee terms, liquidity terms, redemption or other terms.

Changes to the structure of a limited partnership fund can be made in accordance with the terms of the limited partnership agreement and its offering document.



Unit Trust Structure



Unit trusts are contractual arrangements created under a deed of trust made either by the trustee alone or between the manager and the trustee. Unit trusts do not have their own legal personality and contracts are entered into by the trustee in its capacity as trustee of the trust. In certain circumstances the power to enter into contracts on behalf of the trust can be delegated to the manager.

Unit trusts in Cayman are subject to the Trusts Act (Revised). Unit trusts issue units to investors and a unit represents an undivided beneficial interest in the assets of the unit trust.

The assets are legally held by the trustee in its capacity as trustee of the trust on behalf of the investors.

Changes to the structure of a unit trust fund can be made in accordance with the terms of its trust deed and the offering document issued by the trust.

A fund structured as a unit trust may be created with different sub-trusts in order to segregate assets and liabilities between those sub-trusts or to apply different fee terms, liquidity terms, redemption or other terms to those sub-trusts.



Umbrellas, Sub-Funds and Classes

Whichever legal structure is chosen, Cayman funds can offer different share, unit or interest classes within a fund.

Common differentiating factors between classes are:

- investment objectives;
- liquidity terms;
- fee levels and structures;
- service providers;
- investor types;
- minimum subscription/holding requirements;
- entry/exit fees; and/or
- designated currencies.

Segregated portfolio companies benefit from statute based segregation of assets and liabilities between each of the segregated portfolios of the company. The segregated portfolios can also be split into classes or series of shares for the purpose of incorporating differentiating factors at the segregated portfolio level. These types of company are well suited to funds offering separate investment portfolios with differing leverage strategies, risk profiles or investment managers. For unit trusts, limited partnerships and LLCs it is possible to segregate assets and liabilities between different classes of units or interests on a contractual basis with each counterparty or through the use of trading subsidiaries.

Allocation of Assets and Liabilities Between Different Classes

Cayman law allows the allocation of assets and liabilities to different classes within a fund as a matter of the fund's internal accounting. In circumstances where currency classes are hedged within a fund Cayman law allows the gains/losses on any hedging contracts to be attributed to the relevant hedged classes. In the same way certain classes of assets including "new issue" securities may be allocated to dedicated classes of interests.

Liquidity Options

Cayman funds can be structured as open-ended or closed-ended schemes and can utilise a variety of features to address liquidity and/or valuation issues including gates, deferred redemptions, holdbacks, in-kind redemptions and side pockets. It is also possible to establish sub-funds with different liquidity profiles within a single structure so as to take advantage of operational and other economies of scale.

Liquidity Categories

Whilst a closed-ended fund is not required to have a definite duration, generally an expected duration is specified and at the end of the closed-ended period, the constitutional documents of the fund may provide for any number of actions to take place which may include any of the following:

- the redemption of all outstanding equity interests of the fund followed by a voluntary winding up;
- the conversion of the fund's equity interests into interests which are redeemable at the option of its investors;
- the successful completion of an IPO of the fund's shares; and/or
- the extension of the duration of the fund for a further period (generally of two years and generally with the consent of a particular majority of investors).

Gates

For open ended hedge funds redemption gates can be applied (in accordance with the fund's constitutional and offering documents) limiting the number of equity interests to be redeemed on a dealing day to a percentage of the equity interests in issue on the relevant redemption day or to a percentage of the equity interests held by the redeeming investor on that redemption day. Gates should generally be applied on a pro rata basis and requests carried over from a prior dealing day as a result of the application of a gate may be processed with or without priority to later requests depending on the terms of the fund's constitutional documents.

Deferred Redemptions

For an open ended hedge fund, its constitutional and offering documents may provide that the fund may refuse to redeem equity interests which may be appropriate where the fund does not expect to be in a position to liquidate sufficient underlying investments to satisfy all redemption requests or where the fund does not expect to be able to liquidate underlying investments at market value in the time frame available to satisfy those redemption requests.

In Kind Redemptions

For both open ended and closed ended funds, the constitutional and, if applicable, offering documents, may permit the fund to pay redemptions in kind by transferring to investors assets having a value equal to the redemption price for the equity interests redeemed.

Payment of Redemption Proceeds

For both open ended and closed ended funds, the payment

of redemption proceeds should normally be made by the redemption payment date specified in the offering document. Provided that the fund's constitutional and offering documents allow it, a fund may be able to suspend the payment of redemption proceeds. This may be considered appropriate where redemption payments in respect of investments in underlying assets are not received by the fund within the anticipated timescales.

Holdbacks

A Cayman fund may retain redemption proceeds or a percentage of those proceeds where its constitutional and offering documents so provide. It may in some circumstances

be considered appropriate to delay final payment of redemption proceeds until after the completion of the fund's audit.

Side-pockets

For open ended funds, side-pockets may be used where assets which are illiquid or hard to value can be allocated to a separate class (or classes) of equity interest until they can be realised. This is achieved by allocating the relevant assets into a separate portfolio represented by the side-pocket interests and by effecting a mandatory pro-rata reduction in the number or amount of equity interests held by investors and by creating for the benefit of such investors a corresponding pro-rata interest in the side-pocket interests.



Service Providers

Investment Managers and Investment Advisers

There is no requirement for a Cayman fund to appoint a Cayman domiciled investment manager or investment adviser. However, where a Cayman entity is considered appropriate for these roles in terms of tax structuring or in terms of regulatory efficiency the investment manager or investment adviser will generally either be licenced or registered under the Securities Investment Business Act (Revised). Where the fund will be a registered or licensed fund and the investment manager and/or investment adviser is incorporated in the Cayman Islands the manager/advisor is likely to fall within the scope of a "registered person" under the Securities Investment Business Act (Revised) rather than requiring a full licence under that Act. Registered persons will need to make an annual filing of prescribed particulars, submission of regulatory personal questionnaires for each of their individual shareholders and beneficial owners, pay an annual fee and adopt Cayman anti-money laundering compliance procedures including the appointment of AML officers.

Where an investment manager is providing discretionary management services they will also need to satisfy economic substance requirements under the International Tax Co-Operation (Economic Substance) Act (Revised) which requires that certain core activities and the direction and management of the investment manager take place in the Cayman Islands, that adequate staff and premises are maintained in the Cayman Islands and that adequate expenses are incurred in the Cayman Islands.

A full licencing for the investment manager or investment adviser will involve the approval of its operators and beneficial owners by CIMA and the maintenance of adequate financial resources and insurance, implementation of compliance and operational procedures and the appointment of approved Cayman based auditors.

Operators

There is no requirement for a Cayman domiciled corporate fund to appoint Cayman resident directors although advice on taxes levied in the jurisdictions where the fund invests or is marketed may support the appointment of Cayman resident directors.

There is no requirement for a Cayman domiciled limited

partnership fund to appoint a Cayman domiciled general partner although advice on taxes levied in the jurisdictions where the fund invests or is marketed may support the appointment of a Cayman domiciled general partner. The general partner may be a company, a limited partnership or an individual. Where a company or limited partnership is used as the general partner this can be a Cayman domiciled company or limited partnership or a non-Cayman company or limited partnership which has been registered in Cayman, in either case Cayman resident directors of the general partner (or of its general partner) are not required but may be beneficial depending on tax advice.

A Cayman fund structured under a Cayman law governed unit trust deed will generally have a Cayman domiciled trustee which will need to be licensed under the Banks and Trust Companies Act (Revised).

Open ended hedge funds are required to appoint directors that have been registered or licensed with CIMA under the Directors Registration and Licensing Act (Revised).

Administrator

There is no requirement for a Cayman domiciled fund to appoint a Cayman domiciled administrator. For a registered fund the administrator will generally perform the anti-money laundering services for the fund to the Cayman law standard and in many cases will also cover FATCA and CRS reporting services and the provision of AML officers for the fund.

For a licensed fund CIMA will need to be satisfied that the reputation and experience of the appointed administrator before a license is issued to the fund.

Auditor

Registered and licensed funds are required to appoint an auditor approved by CIMA and based in Cayman.

Custodian and Prime Broker

An open ended hedge fund is required to appoint a service provider to ensure the safekeeping of its assets, to verify title to its assets and to keep a record of those assets but that service provider need not be located in Cayman and need not be a custodian or prime broker, the role can be undertaken by an

administrator, other third party or with appropriate disclosures the investment manager, operator or their affiliates.

A closed ended fund is required to appoint a custodian unless it is neither practicable nor proportionate to do so having regard to the nature and type of the fund's assets. Where a custodian is not appointed to a closed ended fund a service provider must be appointed to verify title to the fund's assets and that service provider may be an administrator, other third party or with appropriate disclosures the investment manager, operator or their affiliates. A closed ended fund is also required to appoint a service provider to monitor its cash flows and depending on the nature of the fund's assets maintain a record of the identification codes of the securities traded by the fund. In each case the custodian or service provider appointed to cover these functions need not be located in Cayman.

Registered Office

A Cayman domiciled company or LLC and a Cayman law governed limited partnership are required to maintain a registered office in Cayman. A general partner to a Cayman law governed limited partnership which is registered as a foreign company under the Companies Act (Revised) and

a foreign limited partnership under the Exempted Limited Partnership Act (Revised) are required to appoint an agent for the service of process in Cayman.

Offering Document Disclosure

Relationships with counterparties will generally be fully disclosed in the offering document which will include a description of the relevant fees and potential exposures arising from those relationships.

Taxation

There is no income or capital gains tax imposed by the Cayman Islands government which will apply to distributions or redemptions of interests held by investors in a Cayman fund. Each of the legal structures which may be used for a Cayman fund may register as an exempted entity and apply to the Cayman Islands Governor in Cabinet for an undertaking that no law enacted in Cayman imposing any tax on profits, gains or appreciation or which is in the nature of estate duty or inheritance tax shall apply to the structure for a period of 20 years in the case of a company and 50 years in the case of an LLC, limited partnership or trust.



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