



WHETHER FOR RESTRUCTURING, LISTING ON
US AND ASIAN STOCK MARKETS, LAUNCHING
SPECIAL PURPOSE ACQUISITION COMPANIES OR
ESTABLISHING INVESTMENT FUNDS, THE CAYMAN
ISLANDS HAS LEGAL FRAMEWORKS TO OFFER ASIAN
BUSINESSES BESPOKE APPROACHES IN CAPITAL
RAISING OPPORTUNITIES



LEGAL FRONTIERS IN THE CAYMAN ISLANDS

Overview of Cayman Islands investment funds regime

With its agile regulatory framework, independent political and legal environments, flexible structuring options, tax neutrality and well-developed infrastructure, the Cayman Islands is set to remain the perfect investment funds jurisdiction in 2022, and continue to offer Asia-based fund managers and investors the ideal location to capitalise on opportunities.

EVOLVING FRAMEWORK

Despite 2021 being a challenging year globally, the number of investment funds registered with the Cayman Islands Monetary Authority (CIMA) increased by more than 9.7% over the year. The continuing appeal of the Cayman Islands as an investment funds jurisdiction is attributable in part to the sensible policies of its government and the commercially practical regulatory system.

The government recently introduced a raft of legislation in its continuing efforts to strengthen oversight and keep in line with global standards and industry developments.

Regulation of private funds and limited investor funds. In particular, the Cayman Islands enhanced its investment funds regulation by requiring all Cayman Islands-based private equity and venture capital investment funds to be registered with CIMA. Since registrations commenced in 2020, there are now more than 14,680 “private funds” (closed-ended funds where investors do not have the option to redeem) and limited investor funds (15 or fewer investors) registered.

CIMA rules on net asset value (NAV) calculation, content of offering documents and segregation of assets. In 2020, CIMA published three rules for regulated funds: (1) rules on the calculation of NAVs; (2) rules on the segregation of assets; and (3) rules on the contents of offering documents. The rules aim to enhance the standard of disclosures made to investors and to ensure fund

assets are adequately segregated from the fund operator’s assets, and accounted for.

Economic substance legislation. As a result of the Organisation for Economic Co-operation and Development’s (OECD) global base erosion and profit shifting (BEPS) initiative, and the EU code of conduct group substance requirements modelled on BEPS action 5, the Cayman Islands enacted The International Tax Co-operation (Economic Substance) Act (2021 Revision) (ESA). Under the ESA, certain vehicles formed or registered in the Cayman Islands are required to have “economic substance” in the Cayman Islands.

Importantly, regulated investment funds are outside the scope of the ESA and not required to have economic substance in the Cayman Islands. Cayman Islands managers may be in scope and require specific advice.

Data Protection Act. The Data Protection Act (as revised) regulates the processing of all personal data in the Cayman Islands or by Cayman Islands entities. It impacts all entities established in the Cayman Islands, and applies irrespective of whether personal data is processed outside of the Cayman Islands or if the personal data relates to non-Cayman Islands resident individuals. This provides significant comfort to investors regarding the processing of their personal data.

Anti-money laundering (AML) regime. The Cayman Islands has comprehensive legislation and guidelines to combat money laundering practices. The principal legislation is the Proceeds of Crime Act (as revised), the Anti-Money Laundering Regulations (as revised) and related guidance notes, which apply to a range of business activities conducted in the Cayman Islands, including investment funds and investment managers.

INDEPENDENT LEGAL SYSTEM

As a British overseas territory, the Cayman Islands enjoys economic and

political stability, and a high degree of independence compared to some of its competitors. Its laws are a combination of common law, equity and statute based heavily on English law. It has a sophisticated judiciary, and the English Privy Council remains the highest court of appeal for Cayman Islands decisions.

FLEXIBLE STRUCTURING

Investment funds established in the Cayman Islands may take several different forms, and new types of fund structures are constantly being developed. This flexibility enables fund managers and investors to adapt their investment fund structures to best capitalise on new opportunities.

The core investment vehicles are companies, unit trusts and limited partnerships, or a structured combination of these. In the Cayman Islands there is no tax imposed on income, capital gains or share transfers at the entity level, leaving investors and fund managers to be taxed on income and capital gains received in the jurisdictions where they reside. There are also no foreign exchange controls in the Cayman Islands.

Exempted companies have many of the characteristics of companies in other jurisdictions where investment funds exist. A board of directors manages the operation, while investors own shares that each carry an entitlement to a proportion of the profits or gains of the relevant class of shares, equal to that of any other share in the same class of shares in the company.

Most corporate investment funds are “open-ended”, meaning that investors have the right to redeem their interest or subscribe for more shares periodically. Both are usually based on the prevailing NAV per share of the particular class of fund shares.

Limited liability companies (LLCs) are similar in key respects to Delaware limited liability companies. The LLC is a versatile

entity with a hybrid of the benefits of an exempted limited company and partnership. An LLC is a body corporate with a separate legal personality to its members but maintains the internal accounting and record keeping flexibility of an exempted limited partnership. An LLC may either be managed by its members in accordance with its agreement, or by “managers” appointed by the members. Its members benefit from limited liability to the amount of each member’s agreed maximum contributions, with substantial contractual freedom to agree to the internal workings of the LLC vehicle set out in an agreement within the framework of the LLC Act. US investors may prefer an LLC, given their familiarity.

Exempted segregated portfolio companies. The segregated portfolio company allows the creation of separate portfolios, which operate as a separate pool of assets and liabilities. Each segregated portfolio can have a separate investment strategy. If one portfolio incurs substantial liabilities in excess of its assets, that will not affect other segregated portfolios. The segregation of assets provides statutory protection for umbrella funds created within a single legal entity, and potentially lessens the administrative burden for the fund. In some circumstances, it may also allow investors to switch between portfolios without incurring a tax charge in their tax domicile. The segregated portfolio company structure is very popular.

Exempted unit trusts, in contrast to a company, is not a separate legal entity under Cayman Islands law, but a trust arrangement where legal ownership of the fund’s assets is vested in a trustee who holds the assets on trust for the benefit of the unit holders. The exempted unit trust will be constituted by means of a trust instrument made by a Cayman Islands licensed trustee company, and will be governed by common law and the Trusts

Act. Japanese investors are familiar with the unit trust.

Exempted limited partnerships are a type of partnership widely used for investment funds, particularly closed-ended funds, covering private equity or venture capital. One or more of the partners is a general partner who has legal responsibility for the operation and management of its business, together with unlimited liability for the debts of the partnership.

The remaining partners are limited partners who are restricted from participating in the management of the partnership’s business, but who have liability for the partnership’s debts limited to the extent of their investment. An exempted limited partnership is not a separate legal entity from its partners under Cayman Islands law.

WELL-DEVELOPED NETWORK

The Cayman Islands has a well-developed network of highly organised international professional services firms, many of whom also have a presence in Asia and can provide time-sensitive access to funds, managers and investors.

CRYPTOCURRENCY FUNDS

Cayman Islands investment funds have become instrumental in providing digital asset and cryptocurrency investment strategies. There are particular challenges with conducting AML on investors who subscribe for fund shares in cryptocurrency, along with how to value and custody such assets. The Cayman Islands is at the forefront of procedures to deal with these risks.

2022 AND BEYOND

For the above-mentioned reasons, the Cayman Islands continues to set the standard for investment fund jurisdictions, and is the perfect location for funds to target opportunities in 2022 and beyond.



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