

A large, abstract graphic in the top right corner consists of a network of blue squares and lines, resembling a globe or a complex web structure, with a gradient from light to dark blue.

# Cayman Islands

## Regulation

FUNDS AND FUND MANAGEMENT 2009

### 2.1 Type of funds

The Cayman Islands legal system recognizes the concept of a trust. Funds may be open-ended or closed-ended and can take the form of investment companies, unit trusts, or partnerships. In addition, the partnership and companies can be of limited duration.

### 2.2 Laws

Under the Mutual Funds Law (2007 Revision) a fund operating from the Cayman Islands must hold a mutual fund license and have a registered office in the Cayman Islands or, if a unit trust, a trust company licensed under the Banks and Trust Companies Law (2007 Revision) as its trustee. Alternatively, a licensed mutual fund administrator may administer a fund.

The two major exceptions to the license requirement are:

- where a fund is listed on a recognized stock exchange or over-the-counter market or, alternatively, has a minimum aggregate equity interest purchasable by a prospective investor of CYD 80,000 (equivalent to USD 100,000);
- where the equity interests of the fund are held by not more than 15 investors, the majority of whom are capable of appointing or removing the operator of the fund, or where the fund is not incorporated or established in the Cayman Islands: makes an invitation to the public in the Cayman Islands to subscribe for its equity interests by or through a person who is the holder of a license under the Securities Investment Business Law (2004 Revision), for a regulated activity specified by the Cayman Islands Monetary Authority (Monetary Authority) for the purpose of this exemption, and that those equity interests are listed on a stock exchange (including over-the-counter market) specified by the Monetary Authority or that the fund is regulated in a category, and by an overseas regulatory authority, approved by the Monetary Authority for the purposes of this exemption,.

The Monetary Authority has fairly wide-ranging powers under the law to obtain information and inspect documentation concerning a fund, and may at any time

require a fund to be audited. The Monetary Authority also has powers to close down a fund if it is thought necessary.

There is no difference in regulation between publicly marketed funds and other collective investment undertakings, which are more closely held, other than described above.

### 2.3 Managers, trustees, and custodians

A unit trust that is a regulated mutual fund must have a transfer agent that holds a trust license under the Banks and Trust Companies Law (2007 Revision).

No person may carry on the business of a mutual fund administrator unless authorized to do so by holding a mutual fund administrator's license.

To obtain a license an administrator must:

- have a registered office in the island;
- satisfy the Monetary Authority that it has sufficient expertise to administer regulated mutual funds;
- be of sound reputation and able to administer funds in a proper manner; and
- have a net worth of at least CYD 400,000 (equivalent to USD 500,000).

There is an obligation on a licensed mutual fund administrator to report to the Monetary Authority if it comes to his attention that a fund under administration:

- is likely to become unable to meet its obligations as they fall due;
- is carrying on business otherwise than in accordance with the Mutual Fund Law or any other law; or
- is carrying on business in a manner likely to be prejudicial to investors or creditors.

There are no limits imposed on the fees of managers or of trustees.

### 2.4 Investment restrictions

There are no restrictions on the investment policies of funds.

### 2.5 Borrowing

There are no limits on the borrowing powers of funds.

## 2.6 Accounts and prospectus

Licensed funds must issue a prospectus or offering document which describes the equity interests in all material respects and contains such other information as is necessary to enable a prospective investor in the mutual fund to make an informed decision as to whether or not to subscribe for or purchase the equity interests. These must be filed with the Monetary Authority.

A fund that is exempted from obtaining a license because of the minimum equity investment and/or listing on a stock exchange, must file its current offering document with the Monetary Authority.

Regulated mutual funds must have their accounts audited annually by an approved auditor and the financial statements must be filed with the Monetary Authority within six months of the year end. There is an obligation on an auditor to report to the Monetary Authority, if it comes to his/her attention, that a fund:

- is unable or likely to become unable to meet its obligations as they fall due;
- is carrying on or attempting to carry on business or winding up its business voluntarily in a manner that is prejudicial to its investors;
- is carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited;
- is carrying on or attempting to carry on business in a fraudulent or criminal manner; or
- carrying on or attempting to carry on business otherwise than in compliance with Cayman Islands Law a condition of the license.

## 2.7 Supervision

The Cayman Islands Monetary Authority regulates the mutual funds industry. Its address is PO. Box 10052 APO, Elizabethan Square, George Town, Grand Cayman. Telephone: +345 949 7089, Fax: +345 949 2532.

## 2.8 Fund ownership

There are no restrictions on the percentage of units which may be held by one person or by a group of persons or on the number of unitholders.

## 2.9 Fund structure

There are no restrictions on funds of funds or on umbrella funds.

The Companies Law (2007 revision) provides for the establishment of Segregated Portfolio Companies (SPC's). In an SPC segregated portfolios may be created such that segregated portfolio assets may only be used to meet

liabilities incurred in respect of that segregated portfolio only. SPC's enable a fund to structure separate parts of assets within the one legal activity.

### 2.10 Stock exchange

The Cayman Islands Stock Exchange opened for business in February 1997, and is now available for the listing of mutual funds. The listing conditions applicable to mutual funds are similar to those for other companies.

### 2.11 Bank confidentiality

The Monetary Authority requires Cayman licensees to implement the Money Laundering Regulations and follow the Guidance Notes on the Prevention and Detection of Money Laundering in the Cayman Islands. Both documents are based largely on global / FATF models and the failure to apply the former can result in a prison sentence and or a fine. The regulations provide the high level requirements which the guidance notes expand upon in the areas of due diligence, monitoring transactions, identifying and reporting suspicions, training, and record keeping.

The primary money laundering legislation, Proceeds of Criminal Law 2008, which imposes obligations on persons to report suspicious transactions that might be made through the proceeds of crime (money laundering, drug trafficking, and terrorist financing). Such a report would be made to the Financial Reporting Authority who can decide whether to refer it to the Financial Crime Unit, a police agency in the Cayman Islands. The law also imposes requirements upon businesses to have a nominated money laundering reporting officer.

Apart from banking confidentiality inherent under common law and the Banks and Trust Companies Law (2007 Revision), which provide certain safeguards, the Confidential Relationships (Preservation) Law 1976 makes it a criminal offence for any person to divulge information imparted under conditions of express or implied professional confidence.

However, the Narcotic Drug (Evidence) (United States) Law, and the Tax Information Exchange Agreement with the United States, provide mechanisms for information to be produced to the United States Attorney General. The Tax Information Exchange Agreement provides for exchange of information, upon request, for criminal tax evasion, civil, and administrative tax matters relating to U.S. Federal income tax.

It is worth noting that the Cayman Islands, under FATF guidance, amended their legislation to allow for greater cooperation with investigating agencies from other countries and has had some notable success in providing information and assistance relating under Mutual Legal Assistance Treaties to money laundering investigations and prosecutions instigated outside of the Cayman Islands.

## 2.12 Fund set-up

It can take from one week to one month to set up a fund in the Cayman Islands. Costs for a mutual fund will include both incorporation costs and license fees. Annual license fees range from USD 2,000 to USD 25,000.

## 2.13 Foreign funds

There are no restrictions on foreign funds marketing in the Cayman Islands.

## 2.14 Bearer shares

No Cayman Islands company is allowed to issue bearer shares and legislation governs the actions of financial services providers in the Cayman Islands who may come into receipt of bearer shares from foreign incorporated companies.

## 2.15 Use of the internet

A large number of financial institutions on the island now utilize the internet for marketing purposes. There has increasingly been a trend towards non-Cayman Islands fraudsters setting up website of financial institutions purporting to be from the Cayman Islands in an attempt to elicit monies from unsuspecting third parties. In addition, several of the banks which operate online accounts have reported instances of phishing.

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