

Cayman Islands mutual funds

June 2017

1. REGULATORY REGIME //

Mutual funds are regulated by the Cayman Islands Monetary Authority ("CIMA") under the Mutual Funds Law (2015 Revision) (the "MF Law"). In general, only open-ended funds are regulated and must be registered with CIMA. All registered funds must be audited by a firm of auditors approved by CIMA and located in the Cayman Islands (although there is no objection to the field work being done elsewhere). Closed-ended funds and, by way of exception, open-ended funds with no more than fifteen investors who, by majority, can appoint or remove the operators of the fund (i.e. directors) are not required to be registered.

This note assumes that the mutual fund will take the form of a company and not a partnership or trust. Please contact us if you require further advice on the regulatory regime applicable for partnerships or trusts.

There are three main categories of regulated fund:

Registered Mutual Funds (MF Law section 4(3)).

Funds that require a minimum initial investment of at least US\$100,000 (i.e. those targeted at institutional or sophisticated high net worth investors) or are listed on an approved stock exchange may be registered on filing the following documentation with CIMA:

- a prospectus which properly describes the equity interest (i.e. shares) and contains the information necessary to enable a prospective investor to make an informed decision as to whether or not to subscribe;
- a registration form (Form MF1) and letters of consent from the auditors and administrator;
- an affidavit from the directors of the fund;
- evidence of incorporation;
- the prescribed registration fee (currently US\$4,269) and the initial administrative filing fee (currently US\$366).

The majority of regulated funds in the Cayman Islands fall into this category. There is no requirement that the administrator of a registered fund is resident in the Cayman Islands and the emphasis is on self-regulation. The fund must however, have locally approved auditors.

Administered Mutual Funds (MF Law section 4(1)(b)).

Funds, including those that permit a minimum initial investment of less than US\$100,000, may be established by appointing a licensed mutual fund administrator to provide the principal office of the fund in the Cayman Islands. The administrator has primary regulatory responsibility for the administered fund and has a statutory duty to ensure that the fund is properly administered and that

the promoters are of sound

reputation. The administrator has a statutory obligation to notify CIMA if it knows or has reason to believe that a fund for which it provides the principal office is or is likely to become insolvent or is carrying on business in a manner that is or is likely to be prejudicial to its investors or creditors. The auditors have a similar statutory obligation as described above for registered funds. Similar documentation to that required for a registered fund must be filed with CIMA by the licensed administrator in respect of an administered fund and the prescribed fee paid (currently US\$4,269).

Licensed Mutual Funds (MF Law Section 4(1)(a))

Funds (typically "retail" funds) that are established and operated by large, well-known and reputable institutions may apply for a mutual fund licence. Each director of the fund will be vetted by CIMA and must file a personal questionnaire, financial and character references and police clearance certificates. CIMA must be satisfied that the promoting institution is of sound reputation and that the fund will be properly administered by fit and proper persons with sufficient expertise before a licence will be granted. The prescribed fee for licensed mutual funds is currently US\$4,269.

2. CONSTITUTION AND OPERATIONS //

The constitutional documents of the mutual fund will typically provide for the issue to investors of participating shares in multiple classes or series. They will also provide for the operational details including the method and frequency of calculating the net asset value, the procedures for subscription, redemption and conversion between classes, the segregation of assets relating to each class, and the restrictions (if any) on the ownership of shares.

Corporate mutual funds are the most common vehicle and are managed by their directors of which there should be a minimum of two. However, the day-to-day operations of a mutual fund will normally be delegated to other specialist professionals.

Directors of CIMA regulated mutual funds or companies registered as "excluded persons" under the Securities Investment Business Law (2015 Revision) ("**SIBL**") (each a "**Covered Entity**") are required to be registered or licensed with CIMA under the Directors Registration and Licensing Law, 2014 (the "**DRLL**").

The DRLL distinguishes between **professional directors** (being a natural person appointed as a director of 20 or more Covered Entities), **corporate directors** (being a body corporate appointed as a director of a Covered Entity) and **registered directors** (being individuals who are not professional directors). This note will only address the licensing regime for registered directors. Please contact us if you require further advice with regards to the registration and licensing of professional and corporate directors.

An individual acting as a director of an existing Covered Entity is required to be registered with CIMA. Under the DRLL there is no requirement for technical qualifications in order to serve as a director of a Covered Entity, however, CIMA may refuse to register an applicant if it has information that the applicant has been convicted of a criminal offence involving fraud or dishonesty, or is the subject of sanctions from a regulator, self-regulatory organisation or a professional disciplinary body. The initial application fee is US\$170, together with a registration fee of approximately US\$684. For each subsequent year, the annual registration fee (payable by 15 January) is currently US\$855.

No person may be appointed as a new director of a Covered Entity until they have submitted an application to be registered/licensed under the DRLL. In the case of a mutual fund or investment manager seeking to be registered with CIMA, each director is required to be registered prior to the submission of the application for registration as a regulated mutual fund or SIBL.

“excluded person”. Registration under the DRLL should therefore be made as soon as possible to avoid any delays.

Application for registration must be made in the prescribed form and submitted with the prescribed fee (currently US\$855). The following process must be followed for an individual to be registered as a registered director:

- Directors not already registered with CIMA under the DRLL must first register for a director account with CIMA via the CIMACONNECT portal (see button – Director's Registration) at the following address: <https://gateway.cimaconnect.com/> by providing details, including the name of the Covered Entity for which they are to act as director.
- Once the director has received their registration ID, they should return to the CIMACONNECT portal and, using the 'Complete Registration' button, provide the requested information. At the same time the director must pay the initial application fee by credit card.
- CIMA will within 2-3 business days confirm the registration.

3. ONGOING REGULATORY OBLIGATIONS //

Regulated mutual funds are required to file the following with CIMA on an annual basis:

- prescribed fee to be paid by 15th January;
- audited accounts to be filed within six months of the end of the financial year of the fund. At the same time, a Fund Annual Return (“FAR”) should be filed with CIMA along with the prescribed fee (currently US\$366). The fund's manager or directors should coordinate with auditors the concurrent filing of the FAR and prescribed fee.

Promoters and operators of regulated mutual funds (i.e. directors, trustees or general partners, as the case may be) also have a statutory obligation to notify CIMA:

- of any change that materially affects the information in the prospectus or the application form of which they are aware and to file an amended prospectus (incurring a CIMA administration fee of US\$122) or amended Form MF1 (noting the CIMA administration fee of US\$366) within 21 days;
- if the registered office or principal office of the fund has changed;

Directors registered pursuant to the DRLL are required to:

- pay the annual registration fee of US\$855 prior to 15 January;
- notify CIMA of any change to the information provided within 21 days of such change.

4. INVESTMENT MANAGER //

It is common practice for Cayman Islands mutual funds to have an independent manager who will typically own the voting, non-participating management shares of the fund. There is no requirement for the manager to be resident or domiciled in the Cayman

Islands; a manager based anywhere in the world may provide investment management and advice services to a fund registered in Cayman.

Where the manager is an entity registered in Cayman, SIBL applies. SIBL regulates "securities investment business" broadly encompassing managing securities, dealing in securities, arranging deals in securities and advising on deals in securities. Certain exemptions from SIBL's licensing regime are available, notably to a manager carrying on securities investment business exclusively to companies within the manager's group or to "high net worth" or "sophisticated" persons or Cayman funds the investors of which are such persons. An exemption costs US\$6,098 per year. A manager not able to invoke an exemption or whose activities are not otherwise excluded from SIBL will require a licence from CIMA, which may come with conditions attached. A licence for most types of securities investment business costs a minimum of US\$10,000 per year.

Most managers seek to claim an exemption from SIBL's licensing requirements – typically relying on an exemption arising from acting as manager to a CIMA-registered mutual fund.

The directors of a manager which is required to register as an "excluded person" pursuant to SIBL will need to be registered with CIMA under the DRLL.