

CAYMAN ISLANDS



**MERITAS**<sup>®</sup>  
LAW FIRMS WORLDWIDE

# **DOING BUSINESS IN LATIN AMERICA AND THE CARIBBEAN**





**MERITAS®**  
LAW FIRMS WORLDWIDE

# DOING BUSINESS IN LATIN AMERICA AND THE CARIBBEAN

---

PREPARED BY MERITAS LAWYERS  
IN LATIN AMERICA AND THE CARIBBEAN



Published by Meritas, Inc. • 800 Hennepin Avenue, Suite 600  
Minneapolis, Minnesota 55403 USA

+1.612.339.8680 | +1.612.337.5783 FAX | [WWW.MERITAS.ORG](http://WWW.MERITAS.ORG)

© Copyright 2012, Meritas, Inc. All rights reserved.

## DOING BUSINESS IN LATIN AMERICA AND THE CARIBBEAN

This publication has been prepared by the lawyers of Meritas firms to provide an overview to foreign investors and business people who have an interest in conducting business in Latin America and the Caribbean. The material in this publication is intended to provide general information only and not legal advice. This information should not be acted upon without prior consultation with legal advisors familiar with the specifics of your particular matter.

Meritas firms offer clients the ability to access high quality legal service throughout Latin America and worldwide. With 6,900 experienced lawyers in 177 full-service law firms serving 236 markets, Meritas gives your company access to local counsel around the world.

### Meritas firms

- Offer high quality, worldwide legal services through a closely integrated group of full-service law firms
- Are subject to rigorous selection criteria and continuous monitoring for quality of service through regular assessments and recertifications.
- Provide global reach and access to local knowledge at market rates
- Offer coordinated service across jurisdictions
- Can be found on [www.meritas.org](http://www.meritas.org) which enables direct access to firms through a searchable database of attorney skills and experience plus links to contacts at each Meritas firm

The following currency notations are used in this book.

ARS	Argentinean Peso	DOP	Dominican Republic Peso
BSD	Bahamian Dollar	GTQ	Guatemalan Quetzal
BRR	Brazilian Cruzeiro Real	HNL	Honduran Lempira
KYD	Cayman Dollar	MXN	Mexican New Peso
COP	Colombian Peso	NIO	Nicaraguan Córdoba
CRC	Costa Rican Colón	PYG	Paraguayan Guarani
USD	United States Dollar	UYU	Uruguayan Peso

*Please be aware that the information on legal, tax and other matters contained in this booklet is merely descriptive and therefore not exhaustive. As a result of changes in legislation and regulations as well as new interpretations of those currently existing, the situations as described in this publication are subject to change. Meritas cannot, and does not, guarantee the accuracy or the completeness of information given, nor the application and execution of laws as stated.*

The Cayman Islands are located in the western Caribbean Sea about 480 miles south of Miami and 180 miles northwest of Jamaica. Of the three islands, Grand Cayman is the largest with an area of 76 square miles. The islands of Cayman Brac and Little Cayman are located about 90 miles east of Grand Cayman and have respective areas of 14 square miles and 10 square miles. As of July 2012, the population of the Cayman Islands is estimated to be about 52,560.

During the 1970s, tourism and financial services became the primary economic activities. Today the Cayman Islands are widely recognized as one of the world's leading offshore financial centers and tourism accounts for 50% of its annual GDP.

The Cayman Islands are one of the last self-governing territories of the United Kingdom. A 15-seat Legislative Assembly is elected every four years to handle domestic affairs. From this Assembly, five are chosen to serve as government ministers in a cabinet headed by the governor. The governor is appointed by the British government to represent the monarch. The governor usually allows the country to be run by the cabinet and the civil service to be run by the chief secretary, who is the acting governor when the governor is not able to perform his usual duties.

## **FOREIGN INVESTMENT**

### **REGULATORY FRAMEWORK**

The aim of the regulatory structure is to ensure that investors with assets held by Cayman Islands registered/regulated bodies have recourse against the risk of insolvency, mismanagement or fraud; the financial industry of the Cayman islands remains reliable, stable and internationally respected; the value of the financial services industry of the Cayman islands is enhanced while at the same time ensuring the privacy of investors and customers; and the Cayman islands are not used by criminals for the laundering of the proceeds of drug trafficking or crime.

### **THE CAYMAN ISLANDS MONETARY AUTHORITY (CIMA)**

CIMA was established in July 1997 under the Monetary Authority Law to take over the responsibilities of the former Financial Services Supervision Department. Its duties as an independent regulatory agency include the regulation of insurance companies, banks, trust companies, company management

operations, mutual funds and money transmission services. The regime is intended to conform to the principles of the Basle Concordat and Basle Statement. CIMA is also responsible for issuing and redeeming currency. Under various industry specific laws, its power to regulate, along with that of the Governor in Council, extends to intervention in the running of licensed businesses and the suspension/ revocation of their licenses. CIMA has powers to respond to requests from overseas regulatory authorities for information they need to perform their own regulation functions. If an institution fails to comply with its request for information, CIMA will have to obtain a court order. Along with its program of on-site inspections, CIMA carries out prudential checks on the directors and shareholders of existing and prospective licensees to ensure that they are fit and proper individuals to be concerned in the running of those businesses. This is in addition to its general regulatory functions.

## **COMPLIANCE AND DUE DILIGENCE**

The Cayman Islands have due diligence standards which meet international requirements and are consistent with major onshore and offshore jurisdictions. Cayman Islands service providers are experienced in dealing with sophisticated due diligence issues raised by international investment and financial structures.

## **IMMIGRATION**

### **Permanent Residency**

A Residency Certificate for Persons of Independent Means (RCPIM) is the certificate granted by the Chief Immigration Officer (CIO) to an individual whose application was successful. The Certificate is valid for 25 years and is renewable thereafter by the CIO. This Certificate entitles the successful candidate the right to reside in the Cayman Islands but without the right to work. The spouse and any dependent children of a holder of a (RCPIM) that were listed in the application and who were approved by the CIO will also be granted a Residency Holders (Dependent's) Certificate, which will entitle them to also reside in the Cayman Islands without the right to work for the period of 25 years.

### **Eligibility Requirements**

To be eligible to apply for a RCPIM, the applicant must:

- Be at least 18 years of age
- Not have any serious criminal conviction
- Be in good health and possess adequate health insurance coverage

If they intend to reside in Grand Cayman, applicants must show that they have:

- A continuous source of annual income in the amount of KYD150,000 without having to engage in employment in the Cayman Islands; and
- Invested the sum of KYD750,000 in Grand Cayman of which at least KYD250,000 must be in developed residential real estate.

If they intend to reside in Cayman Brac or Little Cayman, applicants must show that they have:

- A continuous source of annual income in the amount of KYD75,000 without the need to engage in employment in the Islands; and
- Invested the sum of KYD250,000 locally of which at least KYD125,000 must be in developed residential real estate. Where the applicant meets the above criteria, they must also provide the following:
  - ▶ Financial statement prepared by a licensed accounting company;
  - ▶ Evidence of local investment (KYD750,000 minimum);
  - ▶ Bank reference letters detailing the applicant's bank account(s) balance(s);
  - ▶ Police clearance certificate (or sworn affidavit attesting to good character for UK nationals);
  - ▶ Three character references from persons (not relatives) known to the applicant for some years;
  - ▶ Notarized copy of marriage certificate (if married);
  - ▶ Notarized copy of children's birth certificates (if any);
  - ▶ Evidence of health insurance;
  - ▶ Duly completed medical questionnaire (must also be completed by any dependents over the age of 16 and must be taken within six months preceding application).
  - ▶ Duly completed application form;
  - ▶ Cover letter addressed to the Chief Immigration Officer, explaining the grounds for the application and providing any other information that may be considered relevant;
  - ▶ Nonrefundable application fee of KYD500 (USD609.76).

Upon the grant of the application, the applicant will be required to pay a fee of KYD20,000 (USD24,390.24) payable to the Cayman Islands Government.

The premise upon which the CIO will grant a RCPIM is based on the fact that the holders of this particular type of "permanent" residence should not have to

work to support themselves, but should be able to support themselves and their dependents from independent means. If one needs to work in the Cayman Islands to support oneself, applying for this type of permanent residence is not appropriate. Further, one would have to apply for a work permit, to the relevant Immigration Board. In such a case, one should not move to the Cayman Islands in order to seek employment but should first find employment and then apply for a work permit via the proposed employer. Where the work permit application is successful, the individual will be considered a legal resident and thereby permitted to reside and work in the Cayman Islands for a maximum period of seven years at any one time.

## **BUSINESS ENTITIES**

The Cayman Islands Companies Law (2010 Revision) (the Law) requires that Cayman Islands companies maintain certain records and make certain filings. This publication provides a summary of the principal requirements of the Law. Section numbers refer to sections within the Law.

### **TYPES OF COMPANIES**

Cayman Islands companies may broadly be divided into two categories: exempted companies, the objectives of which must be carried out mainly outside the Cayman Islands; and ordinary companies, which may, subject to certain restrictions, carry on business in the Cayman Islands. Exempted companies have traditionally been used as the standard offshore vehicle.

### **REGISTERED OFFICE AND NAME**

All companies must maintain a registered office in the Cayman Islands (s. 50). The name of the company must be displayed outside every office in which the business of the company is carried on, including the registered office, and must appear on all notices and other communications, checks, etc. issued by the company (s. 52).

### **MINUTE BOOK**

The minutes of directors' meetings and shareholders' meetings must be maintained (s. 73) and are typically kept in a minute book. Although there is no requirement that the minute book be maintained at the registered office, in practice, it is generally kept and maintained at the registered office.

### **COMPANY REGISTERS**

Each company is required to keep a register of directors and officers, a register of members and a register of mortgages and charges. All three registers must be

kept and maintained at the registered office, except in the case of an exempted company in which case the register of members may be kept at any place within or outside the Cayman Islands (s. 44).

The register of directors and officers must contain the names and addresses of the directors and officers, and normally also contains their dates of appointment and removal or resignation (s. 55).

The register of members (i.e., shareholders) must contain the names and addresses of the shareholders of the company, the numbers of shares held by each, the distinguishing numbers (if any) of those shares, the amount paid or agreed to be paid on the shares, together with the date on which each shareholder became and ceased to be a shareholder of the company (s. 40).

The register of mortgages and charges must contain details of all mortgages and charges specifically affecting property of the company, including a short description of the property mortgaged or charged, the amount of the charge created and the names of the mortgagees or persons entitled to the charge (s. 54).

## ACCOUNTS

Every company is required to keep proper books of account with respect to its receipts and expenditures, sales and purchases, and assets and liabilities. The accounts must give a true and fair view of the state of the company's affairs and explain its transactions (s. 59). All books of accounts are required to be kept under s. 59, subsection (1) of the law to be retained for a minimum period of five years from the date on which they are prepared. There is no requirement that accounts be audited or filed with the Registrar of Companies (the Registrar).

## FILINGS AND PENALTIES FOR LATE FILINGS

The Registrar must be notified of certain matters which include:

- Any change of a company's registered office, within 30 days. A change of registered office is not effective until the Registrar is notified (ss. 11, 50, 51).

A penalty of KYD10 (USD12) per day is imposed for late reporting, although the Registrar has discretion to cap the penalty at KYD500 (USD610).

- The appointment, removal or resignation of any company director or officer, within 30 days (ss. 55, 56). Again, a penalty of KYD10 (USD12) per day is imposed for late reporting, subject to the Registrar's discretion.



- The passing of a special resolution of the shareholders (which is necessary to change the company's memorandum or articles of association, i.e., its constitutional documents, and for certain other purposes such as, for instance, to change the name of the company, to reduce the company's share capital, etc.). A copy of the special resolution must be filed with the Registrar within 15 days (s. 62), and a copy of the special resolution must also be annexed or embodied in every copy of the company's articles of association (s. 63).
- Any increase in the stated authorized share capital, within 30 days. Again, a per diem penalty of KYD10 (USD12) is imposed for late reporting, subject to the Registrar's discretion (s. 45)

### **Penalties for Late Filing**

For both exempted and ordinary companies, penalties for late filing are imposed if the annual return or fee is not paid before April 1 each year. If the annual return or fee is paid between April 1 and June 30, the penalty is one-third of the annual fee; if paid between July 1 and September 30, the penalty is two-thirds of the annual fee; and if paid after October 1, the penalty is 100% of the annual fee (ss. 42, 168 and 169).

It is important to note that the Registrar will only issue a certificate of good standing if the company is current with respect to filing and paying its annual return and fee.

### **INFORMATION AVAILABLE PUBLICLY AND TO SHAREHOLDERS AND CREDITORS**

Only limited information on Cayman Islands companies is publicly available, consisting of the type of company (i.e., ordinary or exempted), the location of its registered office, the company number, the date of incorporation and whether the company is active or not active.

Both exempted and ordinary companies are required to make their register of mortgages and charges available for inspection by any shareholders or creditors (s. 54).

In addition, an ordinary company is required to make its register of members available for inspection by any member of the public on payment of a nominal fee of KYD10 (USD12) (s. 44). Accordingly, it is usual for shares in Cayman Islands ordinary companies to be held by nominees. The register of members of an exempted company is not publicly available, and details thereof are not provided to the Registrar.

## INFORMATION REQUIRED FOR INCORPORATION

- Choice of three names for the company in order of preference.
- Whether an ordinary or exempted company is required.
- The authorized share capital of the company. We recommend that a company be incorporated with an authorized capital of USD50,000 as this is the maximum authorized capital permitted for the minimum government fees.
- A brief outline of the main objectives of the company.
- The name and address of the beneficial owners of the shares and the number of shares which are to be issued to each shareholder or, if it be the case, that they are to be registered as bearer shares or in the name of nominees.
- The names, addresses and occupations of the directors and officers. The company may appoint such officers as it requires but only a secretary and an assistant secretary are normally recommended. A sole director may not also be the secretary.

It usually takes about five working days to arrange the incorporation of a standard company, although in certain circumstances this may be considerably reduced.

## ORDINARY COMPANIES

These companies may be designated as resident and used for local purposes within the Cayman Islands, or as non-resident and used for offshore purposes.

### Annual Filing Requirements

Every ordinary company, whether local or nonresident, must hold an Annual General Meeting of shareholders. Within 21 days after the Annual General Meeting, the company must list all persons who are members of the company on the 14th day after the Annual General Meeting, and those who have ceased to be members of the company since the last list was made. The list must also contain details of the company's share capital. The list must be filed with the Registrar in January of each year, together with the appropriate annual fee which varies (depending on whether the company is classed as resident or nonresident and on the authorized share capital) between KYD300 and KYD815 (approx. USD365.85 and USD993.90) (ss. 58, 41).

In addition:

- The company is required to maintain at its registered office and open to public inspection a Register of Members containing the names and addresses of its past and present shareholders. If

required, nominees may be used and the information contained in the Register will relate to the nominees and not to the beneficial owners.

- The name of the company must include the word “Limited” or “Ltd.”
- Subject to certain restrictions the company may alter its Memorandum of Association with respect to the objectives of the company and its share capital.
- The company may own a British registered ship even though the beneficial owners of the company are not British subjects.

## **EXEMPTED COMPANIES/EXEMPTED LIMITED DURATION COMPANIES**

A company which proposes to carry on its business mainly outside the Cayman Islands may be registered as an exempted company.

### **Annual Filing Requirements**

Every exempted company must file an annual return that confirms the company has complied with various provisions of the Law relating to exempted companies since the date of the previous annual return. The annual return is filed with the Registrar, together with the appropriate annual filing fee which varies (depending on the authorized share capital of the company) between KYD700 and KYD2,568 (approx. USD853.66 and USD3,131.71) (ss. 168-169).

Some features of an exempt company are:

- The shareholders of the company are not on public record and are not known to the Registrar of Companies.
- The company may issue bearer shares (which must be held by a licensed custodian under Cayman Islands law).
- Share capital may be denominated in any of the major currencies.
- Issue of fractional shares is permitted.
- The name of the company need not include the word “Limited” or “Ltd.”
- The company may obtain a Guarantee from the government against the imposition of future taxes in the Cayman Islands. Such Guarantee is normally granted in the first instance for a period of 20 years.
- The company may alter its Memorandum of Association without restriction.
- There is no requirement that directors or shareholders meetings be held in the Cayman Islands.

- The company may own a British registered ship even though the beneficial owners of the company are not British subjects.

## **Exempted Limited Duration Companies**

Exempted Limited Duration Companies (s.179) have a few different features from standard Exempted Companies which are :

- The company must have at least two shareholders.
- The duration of the company cannot exceed 30 years.
- The name of the company must include at the end the words “Limited Duration Company” or “LDC.”
- The transfer of shares may require all other investors’ consent.
- The management of the fund may be vested in the investors, who may be considered the directors.

The concept of Exempted Limited Duration Companies originated from the necessity to provide a tax-transparent vehicle for certain U.S. investors, but it is understood Exempted Companies are generally able to make a “check the box” election for U.S. tax purposes to achieve the same effect under U.S. tax law.

## **Tax Exemption**

An exempted company is entitled to apply under Section 6 of The Tax Concessions Law (2011 Revision) for an undertaking that no law enacted in the Cayman Islands after the date of the undertaking imposing any tax to be levied on profits, income, gains or appreciations shall apply to the company or its operations, and that no tax to be levied on profits, income, gains or appreciations or which is in the nature of estate duty or inheritance tax shall be payable on or in respect of the shares, debentures or other obligations of the company or by way of withholding in whole or in part on any dividend payment or other distribution of income or capital by the company to its members or to a payment of principal or interest or other sums due under a debenture or other obligation of the company.

The undertaking may be granted for a period not exceeding 30 years from the date of approval of the application and, in practice, the undertaking is normally given for 20 years.

## **SEGREGATED PORTFOLIO COMPANIES**

An exempted company may be established as a Segregated Portfolio Company (SPC) with segregated portfolios. The assets and liabilities of different segregated portfolios are segregated and each segregated portfolio is protected from the liabilities of other segregated portfolios. An SPC must include either the words “Segregated Portfolio Company” or “SPC” in its name and each must

have its own distinct name or designation including the words “Segregated Portfolio” or “SP.”

A business plan must be submitted for each segregated portfolio which will be subject to regulatory approval as if it were a stand-alone entity.

While an SPC may issue shares attributable to specific segregated portfolios, it is not required to do so. The proceeds of the issue of any shares become an asset of the relevant portfolio. Assets allocated to a particular segregated portfolio become known as Segregated Portfolio Assets and may arise from payment of capital, share premium, contributed surplus and retained earnings. The assets must be separately identifiable from assets of the company itself and other segregated portfolios.

Under the law, directors have the responsibility to establish and maintain procedures designed to keep the assets of different portfolios segregated from each other as well as from the general assets of the company. The company’s general assets may be subject to a creditors claim if the assets within a segregated portfolio are not sufficient to satisfy the liabilities of such segregated portfolio, but only to the extent the general assets exceed the minimum capitalization requirement set by CIMA and the right of recourse to the general assets can be removed entirely by making specific provision in the Articles of Association of the SPC.

## **HOLDING COMPANY**

The Cayman Islands is a well-known jurisdiction for establishing holding companies with operating structures in many different jurisdictions. The Companies Law governs all companies (including holding companies) and allows for corporate structures that are particularly favorable for holding companies.

In addition, the Cayman Islands have a wealth of experienced and service-orientated professionals, including lawyers, administrators and professional directors, who are able to help establish, maintain and, where required, provide offshore independent directors for holding companies.

## **Incorporation**

An exempted company, which generally serves as the holding company, can be established within one working day. It is invariably a clean vehicle with no trading history. Government incorporation costs can be kept relatively low provided the correct capital structure is adopted. There is no statutory minimum capital requirement for a holding company.

## **Tax, Accounting and Regulatory Structure**

The Cayman Islands are tax neutral (there is no income tax, capital gains tax or corporation tax). Further, the government will issue an undertaking that a holding company, if correctly structured, will remain free of income tax, capital gains tax or corporation tax imposed by any future laws for a period of 20 years (which may be extended for another 10 years). Stamp duty, although imposed, can generally be avoided by keeping original documentation outside the Cayman Islands and, where payable, is normally capped at relatively low levels. Likewise, there are no foreign exchange controls. There is no requirement for pure holding companies to be registered with or regulated by any Cayman Islands authority or governmental body. In addition, there is no particular form required for financial statements or for such to be audited, so parties may choose the most appropriate accounting standards.

## **Capital Structure**

Pursuant to special provisions in the Companies Law, a company's share capital can be structured in such a way as to allow it to have the features of equity while at the same time allowing for all or the majority of the share capital to be repayable as if it were debt, provided the company is solvent. It is critical that the correct capital structure be established from the outset, as trying to do so after the event can, at best, be cumbersome in terms of corporate documentation and, at worst, have unfavorable tax consequences onshore.

A holding company is usually capitalized by transferring shares or assets to the Cayman Islands Company in return for the issue of shares. There are three common ways for this capitalization/share issue to occur as summarized below. As previously mentioned, the method of capitalization has ongoing consequences for the company so it is important the correct structure is chosen from the outset.

## **Issuing Shares in Return for Paid Up Share Capital**

This is the simplest method and arises whenever shares are issued at their nominal or par value in return for assets. Share capital consists of the par value of the shares issued in return for the assets transferred or cash contributed.

For example, where a shareholder contributes USD 100,000 worth of assets, and is issued shares with an aggregate par value equal to USD 100,000, paid-up share capital will be USD 100,000. A company may not make distributions or dividends out of its share capital and the only way to return share capital is on the liquidation of the company, by an application to court to reduce the issued share capital, or, in some circumstances, by the company purchasing its own shares or redeeming its own shares (provided the shares are issued as redeemable shares). By comparison, share premium can be used to pay a dividend or distribution, provided the company's articles of association allow this.

## **Issuing Shares at a Premium**

Share premium arises when the assets or cash contributed in return for shares exceed the par value of the shares. For example, a person contributes USD100,000 of assets in return for 1,000 shares with a par value of USD1 each. The paid-up share capital is USD1,000 and the additional USD99,000 is share premium. Separate entries for share capital and share premium must be made in the company's accounts. Share premium, subject to the company being solvent, may be applied and distributed in such manner as the directors from time to time determine. For instance, a company may pay distributions or dividends to its shareholders out of share premium without restriction provided that the company is able to pay its debts as they fall due in the ordinary course of business immediately following the date on which the distribution or dividend is paid. As mentioned above, the rules regarding the return of share capital are far more restrictive.

## **Capital Contribution/Capital Surplus**

This arises when a person transfers assets to a company other than as share capital or loan capital and for nil consideration, i.e., essentially a gift. For example, a person transfers USD100,000 of assets for no consideration without the issue of shares and without the company becoming correspondingly indebted to such person. In such case, the capital contributed can be treated as profit of the company and the company may make dividends or distributions to its shareholders using this capital contribution. Such capital contributions are sometimes referred to or characterized as contributed surplus. It is important that the person making the capital contribution make it clear that he or it is making a capital contribution for nil consideration and not a loan or a contribution in return for shares. This can be done by a simple letter (although in some circumstances it may be preferable for such transfers to be by way of deed to overcome any issues of consideration and, obviously, the assets in question will need to be effectively transferred to the company in accordance with the laws of the country in which they are situated).

Issuing shares at a premium is often the preferred option for offshore holding companies and group companies, but ultimately this depends on the onshore tax treatment. Generally, a valuation of the assets transferred to the holding company is prepared in conjunction with the capitalization or a certificate as to their estimated value is given by one of the directors.

## **Preference Shares, Deferred Shares, Ordinary Shares & Other Share Capital**

The Companies Law allows for the issue of shares with all manner of rights, privileges or restrictions. Hence, it is possible and indeed common for a holding

company to issue preferred shares (termed “preference shares”) and common shares (termed “ordinary shares”). Shares can be issued as redeemable at the option of the company or the shareholder and may be redeemed out of capital provided the company is solvent. Secondary classes of shares with deferred or subordinated rights may be issued.

Further, there is no prohibition on a company granting financial assistance for the purchase of its own shares, provided that the board of directors believes this is in the best interests of the company.

## **Creditors**

The Cayman Islands is a creditor-friendly jurisdiction; there is no equivalent to Chapter 11 or administrative receivership. Recognition of contractual subordination, contractual netting and setting off is enshrined in statute. This ensures that, if issued, the ranking of senior and junior debt will be enforceable and recognized even where creditors are unsecured, and waterfalls between different classes of creditors can be guaranteed. Subordination, contractual netting and setting off provisions may be enforced before as well as after insolvency.

## **The Cayman Islands Stock Exchange**

An added attraction is the Cayman Islands Stock Exchange (CSX) which has introduced streamlined rules for listing debt and preference shares for holding companies. Further, the Board of the UK Inland Revenue has granted the CSX status as a recognized stock exchange. This means that companies whose securities are listed on the CSX can take advantage of the Eurobond Exemption and interest may be paid on their securities without the deduction of UK tax. Companies that are operating in Europe may be able to take advantage of this with regard to their European operations. Moreover, securities listed on a recognized stock exchange are among the categories of securities that can be held by a personal pension scheme in the UK.

As a further attraction, CSX listed securities are regarded as qualifying investments. Most of all the securities held directly in Personal Equity Plans (PEPs) and Individual Savings Accounts (ISAs) must be qualifying investments.

## **Independent Directors**

There are experienced firms established in the Cayman Islands who are able to provide independent directors resident in the Cayman Islands so that the holding company is managed and controlled from offshore. This is often essential to achieve the desired tax treatment onshore.



## **Bank Accounts**

The Cayman Islands have an efficient banking system with many of the retail banks offering Internet Web-based services directed particularly at customers outside the Cayman Islands. A holding company will be able to open a Cayman Islands bank account in most currencies subject to provision of the usual Know Your Customer requirements and account-opening documentation.

## **FOREIGN COMPANIES**

Foreign companies are defined as all bodies corporate incorporated outside the Cayman Islands which establish a place of business or commence carrying on business within the Cayman Islands. Every foreign company must be registered as such within one month after becoming a foreign company as defined above. Once registered, a foreign company has the same power to hold lands in the Cayman Islands as if it were a company incorporated in the Cayman Islands.

## **Share Registers**

It has been clarified that merely maintaining a share transfer or share registration office for a foreign company in the Cayman Islands does not constitute conducting business in the Cayman Islands, requiring such company to register as a foreign company under Part IX of the Company Law. This ensures that the registrar and transfer agency services can be provided to a foreign company in the Cayman Islands without requiring the foreign company to be registered under Part IX of the Companies Law.

A company may now keep a branch register in any country or territory containing such category or categories of members as the company may determine from time to time (section 40A).

Listed shares may be kept in a non-legible form if this complies with the laws and the rules and regulations of an approved stock exchange on which such shares are listed (40B(1)).

## **INSURANCE COMPANIES**

All companies carrying on insurance business in or from within the Cayman Islands must be licensed pursuant to the Insurance Law (2008 Revision) before commencing business. Furthermore, no company may be incorporated or conduct business in the Cayman Islands without either obtaining a license under the Insurance Law, or the consent of the Cayman Islands Monetary Authority (CIMA) if any one of the following restricted words is included in the name:

- Insurance
- Reinsurance
- Casualty
- Indemnity
- Assurance
- Underwriting
- Guarantee
- Surety

Application for an insurer's license is submitted to CIMA, which is responsible for regulating the insurance industry in the Cayman Islands. Once approval in principle is obtained, the company can be incorporated and the license will be issued when all outstanding legal requirements have been satisfied.

### **Class A License**

Class A Licenses are required by those companies specifically wishing to insure domestic risks in the Cayman Islands.

### **Class B License (Restricted and Unrestricted)**

A Class B license can be either an unrestricted license or a restricted license. Both types permit the holder to conduct offshore (but not Cayman Islands) insurance and re-insurance business, but a Restricted B licensee may only write insurance for its shareholders. Application for a Class B license may be made by an exempted company or an ordinary nonresident company incorporated in the Cayman Islands or a foreign company incorporated elsewhere but registered in the Cayman Islands. It should be noted that the Cayman Islands government has expressed a preference for using exempted companies.

In addition, there are provisions for the licensing of insurance managers, insurance brokers, agents and representatives.

### **Requirements for Category B Insurance License Application**

The following information is required to submit an application:

1. The name of the applicant. The proposed name may not be too similar to that of any company carrying on business in the Cayman Islands, or to any major insurance company in any other jurisdiction. Further, the name should be indicative of the nature of the company's business.
2. Whether the license is to be restricted or unrestricted.
3. The date on which the applicant intends to commence carrying on business.
4. Whether the business to be transacted is to be general, long term or a combination of both.

Long term business is defined as "insurance business involving the making of contracts of insurance

- a) on human life or contracts to pay annuities on human life but excluding contracts for credit life insurance and term life insurance other than convertible and renewable Term Life contracts;
- b) against risks of the persons insured sustaining injury as the result of an accident or of an accident of a specified class or

becoming incapacitated in consequence of disease or diseases of a specified class, being contracts that are expressed to be in effect for a period of not less than five years or without limit of time and either not expressed to be terminable by the insurer before the expiration of five years from the taking effect thereof or are expressed to be so terminable before the expiration of that period only in special circumstances therein mentioned;

- c) whether by bonds, endowment certificates or otherwise whereby in return for one or more premiums paid to the insurer a sum or series of sums is to become payable to the person insured in the future, not being contracts falling within paragraphs (a) or (b).”

General business is all other business which is not categorized as being long term.

5. Details of the company’s registered office and its principal place of business.
6. If the applicant is to depend on agents or a service company for the provision of underwriting, management, financial or account services, full details must be provided together with evidence of such agent or company’s willingness to provide these services. It is usually necessary to employ the services of a local insurance manager unless the applicant maintains a permanent staffed office in the Cayman Islands.
7. A draft of the proposed Memorandum and Articles of Association of the Company. Both the Memorandum and Articles of Association of insurance companies require individual drafting to ensure that each client’s needs are fully met.
8. The names, addresses and nationalities of all shareholders. In the event that any of those persons acts as nominee, then full details of this relationship must be disclosed. Further, if the shares are held by a holding company, details of ultimate beneficial ownership must be provided.
9. Curricula vitae of all directors, managers and officers containing details of date of birth, nationality, qualifications and career, with particular emphasis on their experience in the insurance profession.
10. Satisfactory evidence that none of the shareholders, directors, officers or managers has a criminal record. Ideally this should be in the form of police clearance certificates, but an affidavit sworn before a notary public is acceptable in countries where police clearance certificates are not readily obtainable.

11. The regulations require that three references shall be provided, including one financial reference and one professional reference on each of the directors, officers, managers and shareholders. In the case of an insurance company being owned by a company in another jurisdiction, copies of such parent's latest financial statements should be submitted with an insurance reference from such company's existing insurers.
12. The name and address of the principal agent or representative resident in the Cayman Islands, together with details of the principal office where full business records will be kept. It should be noted that full business records must be kept in the Cayman Islands.
13. The name, address and professional qualifications of the auditor together with the accounting standards that are to apply. In addition, evidence that the auditors have agreed to their appointment must be attached.
14. The date of the financial year end of the company.
15. The name and address of one or more persons resident in the Cayman Islands who are authorized to accept service of process in legal proceedings on behalf of the company.
16. Applicants for a Class B (unrestricted) license must provide a written undertaking to comply with the minimum net worth requirements under the law at all times, and must provide evidence to support this undertaking. The net worth requirements are as follows:
  - i) in the case of an insurer effecting general business but not long term business, not less than USD120,000;
  - ii) in the case of an insurer effecting long term business but not general business, not less than USD240,000;
  - iii) in the case of an insurer effecting long term business and general business, not less than USD360,000.

Net worth is defined as follows:

"... excess of assets (including any contingent or reserve fund secured to the satisfaction of CIMA) over liabilities other than liabilities to partners or shareholders."

Assets held to satisfy the statutory net worth requirement should preferably be in cash or cash-type readily realizable investments. It will be a condition of the license that net worth be maintained. However, if any part of the funding of the insurer is to be provided in the form of a Letter of Credit, that Letter of Credit should be automatically revolving, or be in force for a period of

at least three years. In the event that this is not the case, some other form of security is required to ensure that the requisite net worth is maintained even if the Letter of Credit is not renewed.

For restricted licenses, the Law does not set out any specific net worth requirements and each application is considered in light of its business plan. However, CIMA will normally recommend that the business conducted by the company conform to industry practice in regard to the net worth of the company.

Although the current regulations do not specify premium-to-capital ratios or ratios for individual risk exposure to total capital, it should be noted that CIMA insists that the company's insurance program be structured with a sound capital base.

It should be noted that loans to related parties made by the insurer will normally be treated as inadmissible assets for the purposes of satisfying net worth requirements. CIMA has requested that any such arrangement should be submitted for prior approval.

17. CIMA will require a three-year business plan which should cover the following:

- capitalization of the company
- volume of premiums to be written
- classes of business to be transacted
- whether or not a fronting company is to be used
- the proportion of business to be re-insured
- the nature of the reinsurance program
- retentions of net premiums and maximum liability per risk and catastrophe
- in the case of a restricted license, the names and addresses of the insured and their relationship (if any) to the company or its shareholders

The importance placed on this document cannot be over-emphasized.

Copies of reinsurance contracts and treaties should accompany the business plan where appropriate.

CIMA has indicated that where a fronting company or a reinsurer is to be involved, approval will only be given to one having a rating of B-Plus or better in Best's Insurance Manual.

18. Full details must be given if any of the parties connected with the application has ever applied either individually or in conjunction with others for authority to transact insurance business in any other jurisdiction.

19. CIMA will also wish to know whether it has permission to disclose any information to inquirers and in particular details of the following:

- the principals of the insurer
- the management of the insurer
- the total asset position of the insurer from time to time
- the net worth position of the insurer from time to time; and
- the type of business conducted by the insurer

It should be emphasized that such authority to disclose is entirely in the insurer's discretion and refusal to permit such disclosure will not in any way prejudice the outcome of the application.

### **Annual Requirements**

Once the license has been granted and the Company incorporated, there are a number of annual requirements including:

1. The annual license fee must be paid on or before January 15 each year.
2. An audit must be carried out under the approved generally accepted accounting principles within six months of the financial year end and submitted to CIMA.
3. A Certificate of Compliance must be provided by the appointed independent auditor or underwriting manager. This certificate of compliance will state the period under consideration and that the company has carried on its insurance business in accordance with the original business plan subject to any other approved changes.

## **INVESTMENT FUNDS**

The investment funds industry in the Cayman Islands has achieved significant growth in recent years, with over 10,871 active investment funds recorded in official Cayman Islands registers at 30 June 2012. In addition, there are a significant number of investment funds, primarily closed-ended funds, which are not recorded, so the number is likely to be significantly higher. The amount of funds under management is difficult to estimate, but it is safe to say that it is in the trillions of U.S. dollars.

The Cayman Islands has developed into the preeminent global jurisdiction for offshore investment funds across the investment spectrum. The growth of the investment fund industry in the Cayman Islands is attributable, in part, to the sensible policies of the Cayman Islands government and the commercially practical regulatory system and favorable laws.

Further, the Cayman Islands' "no tax" status, proximity to the financial markets of the United States and Europe and sophisticated world-class professional and banking infrastructure have contributed to its success as a base for investment funds.

The key legislation involved is as follows:

- Companies Law (2012 Revision), which provides for the incorporation of exempted companies, exempted limited duration companies and segregated portfolio companies;
- Exempted Limited Partnership Law (2012 Revision), which provides for the establishment of exempted limited partnerships;
- Trusts Law (2011 Revision), which provides for the establishment of exempted unit trusts;
- Mutual Funds Law (2009 Revision), which sets up a straightforward platform for the regulation and administration of investment funds;
- The Securities Investment Business Law (2011 Revision), which regulates securities investment business; and
- Proceeds of Crime Law (2008 Revision) and Money Laundering Regulations (2010 Revision), which require financial services providers to follow anti-money-laundering procedures.

## **SELECTION OF THE FUND STRUCTURE**

Investment funds established in the Cayman Islands take a number of different forms and new types of fund structures are constantly being developed. However, the core investment vehicles are companies, unit trusts and limited partnerships, or a structured combination thereof. Each of these vehicles is described in more detail below.

The appropriate form of investment vehicle will be determined largely upon:

- The tax efficiency for investors and management in relation to profits and gains of the fund;
- The general preference of prospective investors at whom the investment product is being targeted;
- The costs in establishing and administrating the fund structure.

While all of these considerations will be important in selecting whether the corporate, trust or partnership form is used, the taxation implications for investors will generally be the determining factor. The promoters of the investment fund will generally wish to ensure that, at the least, the fund achieves tax neutrality, whereby an investor will be in the same tax position whether he makes his investment directly in the underlying assets or through an investment in the fund.

In some jurisdictions, the corporate form, by virtue of being a separate legal entity, is treated as being nontransparent or opaque for taxation purposes; profits and gains of the company do not constitute taxable income of investors until actually received by investors. It should be noted that current U.S. tax law allows some companies to elect to be transparent for U.S. tax purposes.

On the other hand, a limited partnership and a unit trust will for tax purposes generally be treated as being tax transparent. The effect of this is that profits and losses of the limited partnership or unit trust are attributed to the partners or unitholders themselves (regardless of whether they have actually received such profits) who will be taxed according to their proportionate share of such profits and losses.

Investors in different jurisdictions will be more familiar with some fund structures than others. Nearly all jurisdictions will be quite familiar with the corporate structure as a separate legal entity, issuing shares which each carry a proportional share of profits of the particular class of shares of the fund. However, some jurisdictions are not familiar with either limited partnerships or unit trusts. This is usually due to these structures both having limited liability for investors, while not being a separate legal entity. In particular, trusts are a concept derived from UK common law principles and have no equivalent in some civil law jurisdictions. For these reasons, some investors prefer a corporate form given their familiarity with that structure.

The cost in establishing and administering an investment fund can vary significantly depending on the structure. Companies tend to be the simplest structure with issued shares, and no necessity for trustees or general partners.

In contrast, limited partnerships and unit trusts tend to have higher operating costs as general partner companies and licensed trustees are required. As a general comment, obviously the greater the complexity and number of entities involved, the higher the establishment and ongoing costs.

In all circumstances, tax advice should be obtained in any jurisdiction where the fund, investors or management are liable for taxation to analyze the specific circumstances, as tax laws can differ.

## **EXEMPTED COMPANIES/EXEMPTED LIMITED DURATION COMPANIES**

Exempted Companies and Exempted Limited Duration Companies have many of the characteristics of companies in other jurisdictions where investment funds exist. A board of directors manages the operation of the company (except for some Exempted Limited Duration Companies – see page 98), while investors own shares which each carry an entitlement to a proportion of the profits or



gains of the class of shares of the company, equal to that of any other share in the same class of shares in the company.

Most corporate investment funds are what are known as open-ended investment companies. This means that investors have the right to redeem their interest in the investment fund periodically, or subscribe for more shares periodically, both usually based on the then prevailing net asset value per share of the particular class of shares of the investment fund.

An open-ended investment company will usually have participating redeemable shares held by investors which are redeemable at their net asset value and carry no or very limited rights to vote at shareholder meetings. There may also be a different class of shares often called management shares, which are non-participating and which also carry voting control of the company. Such shares are often held by the promoter or management or may be held upon the terms of a charitable or purpose trust, so that control of the company is not vested in onshore persons for taxation reasons. Campbell Corporate Services Limited are able to act as trustee of a charitable trust for this purpose.

The participating redeemable shares usually are issued with a minimal par value and a very large share premium amount, to facilitate redemption of shares under Cayman Islands law. As long as the company is solvent, the company can redeem shares without needing to evidence profits of the company or the issue of new shares. Shares redeemed and cancelled may subsequently be reissued to new shareholders.

Other particular characteristics of these companies include:

- The ability to issue bearer shares (which must be held by a licensed custodian under Cayman Islands law);
- No requirement to disclose the identity of shareholders;
- Share capital may be denominated in any of the major currencies
- The issue of fractional shares is permitted
- The necessity to lodge an annual return with the prescribed fee

Exempted Limited Duration Companies have the following features different from standard Exempted Companies:

- The company must have at least two shareholders
- The duration of the company cannot exceed 30 years
- The transfer of shares may require all other investors' consent
- The management of the fund may be vested in the investors, who may be considered the directors

The concept of Exempted Limited Duration Companies originated from the necessity to provide a tax-transparent vehicle for certain U.S. investors, but it is understood Exempted Companies are generally able to make a “check the box” election for U.S. tax purposes to achieve the same effect under U.S. tax law.

The Exempted Company is currently the most popular entity employed in structures for hedge funds and other open-ended funds.

## **SEGREGATED PORTFOLIO COMPANIES**

Some funds will pursue multiple distinct investment strategies and offer investors the choice to have their investment monies applied to only some of the investment strategies, rather than to all investment strategies adopted by the fund. In that situation, investors expect that their return on investment will not be affected by the activities of the fund in relation to the other unrelated investment strategies. However, as creditors of a company are usually able to claim against all assets held by a company, the assets and profits relating to one investment strategy may be liable to claim to satisfy liabilities incurred from a wholly separate investment strategy. Accordingly, prior to the introduction of the segregated portfolio company concept, investors often insisted on a separate legal entity for each investment strategy to ensure complete legal protection from the losses and liabilities incurred by another investment strategy.

The segregated portfolio company provides a cost-effective solution to this issue by allowing the creation of separate portfolios which each operate as a separate cell/pool of assets and liabilities, as a matter of Cayman Islands law. The assets and liabilities of each portfolio are thereby segregated and legally protected from the assets and liabilities of other portfolios. If one portfolio should incur substantial liabilities in excess of its assets, that will not affect other segregated portfolios. It is unclear whether other jurisdictions will legally recognize the concept of segregated portfolios as wholly separate from each other and so all contracts that a Cayman Islands segregated portfolio company enters into should state that the counterparty is not able to claim against assets of other unrelated segregated portfolios and preferably be governed by Cayman Islands law and be subject to the jurisdiction of the Cayman Islands courts.

The segregation of assets provides legal protection for umbrella funds created within a single legal entity, and potentially lessens the administrative burden for the investment fund. In some circumstances, it may also allow investors to switch between portfolios without incurring a tax charge in their tax domicile.

## **Current Amendments to SPC (s. 217-228A)**

Provisions relating to segregated portfolio companies have been amended as follows:

- Personal liability of directors in the case of misattribution of an asset or liability to a segregated portfolio has been removed and replaced with a procedure for resolution of such misattribution (s. 218);
- To allow assets and liabilities to be transferred between segregated portfolios or (which was not previously the case) between a segregated portfolio and the general assets at full value (s. 219);
- To require that the Registrar of Companies is given notice of all existing portfolios when filing the annual fees due and the portfolios which have been terminated since such notice was last given (s. 213(5) and (6));
- To enable terminated portfolios to be reinstated which may be desirable, for instance, if assets attributable to a terminated portfolio are subsequently discovered or received (s. 228A);
- To establish a procedure for terminating portfolios which no longer have any assets or liabilities (s. 228A).

## **EXEMPTED UNIT TRUSTS**

In contrast to an investment fund company, an exempted unit trust is not a separate legal entity as such under Cayman Islands law, but a trust arrangement whereby legal ownership of the funds assets is vested in a trustee who holds the assets of the fund on trust for the benefit of the unitholders.

The exempted unit trust will be constituted by means of a trust instrument usually made by a Cayman Islands licensed trustee company and will be governed by the Trusts Law (2011 Revision).

The investment manager is also commonly a party to the trust instrument. It is usual for the trust instrument to contain such provisions regulating the issue, redemption and valuation of units, as would in the case of shares of an open-ended investment company be found in its articles of association.

For most practical purposes, an exempted unit trust can operate and be regulated in a similar manner as a corporate investment fund.

## **EXEMPTED LIMITED PARTNERSHIPS**

An exempted limited partnership is a type of partnership arrangement widely used for investment funds. One or more of the partners is a general partner who has legal responsibility for operation of the partnership and management of

its business, and also has unlimited liability for the debts of the partnership. These are either Cayman Islands Company, foreign companies registered to do business in the Cayman Islands or itself an exempted limited partnership, which have very few assets, to avoid serious financial loss pursuant to the general partner's 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 debts of the partnership limited to the extent of their investment. An exempted limited partnership is not a separate legal entity from its partners under Cayman Islands law.

Exempted limited partnerships are used for various international tax planning purposes and extensively for closed-ended fixed term investment funds, e.g., private equity and certain real estate funds.

In order to establish an exempted limited partnership, a statement needs to be filed with the Registrar containing the following:

- Name of the partnership
- The general nature of its business
- Name and address of registered office in the Cayman Islands
- The term (it may be for an unlimited duration)
- The name and address of the general partner, along with a certificate of incorporation/registration and a certificate of good standing
- A declaration that it will not undertake business in the Cayman Islands except to the extent necessary to carry on business outside the Cayman Islands

Various activities may be carried out by limited partners without limited partners becoming liable as general partners by virtue of participating in the management of the partnership. In particular, a limited partner will not be deemed to be participating in the management of the partnership by:

- Holding an office or interest in, or having a contractual relationship with, a general partner or being a contractor for or an agent or employee of the exempted limited partnership or a general partner or acting as a director, officer or shareholder of a corporate general partner;
- Consulting with and advising a general partner or consenting or withholding consent to any action proposed, in the manner contemplated by the partnership agreement with respect to the business of the exempted limited partnership or exercising any right conferred by the Law;

- Investigating, reviewing, approving or being advised as to the accounts or business affairs of the exempted limited partnership or exercising any right conferred by the Law;
- Acting as surety or guarantor for the exempted limited partnership either generally or in respect of specific obligations;
- Approving or disapproving an amendment to the partnership agreement;
- Calling, requesting, attending or participating in any meeting of the partners;
- Taking any action that results in the winding up or the dissolution of the exempted limited partnership;
- Taking any action required or permitted by the partnership agreement or by law to bring, pursue, settle or terminate any action or proceedings brought pursuant to section 13(2) of the Law which permits the equivalent of shareholder derivative actions for an exempt company; or
- Appointing a person to serve on any board or committee of the exempted limited partnership, a general partner or a limited partner or removing a person therefrom; or
- Voting as a limited partner on:
  - ▶ the dissolution or winding up of the exempted limited partnership;
  - ▶ the purchase, sale, exchange, lease, mortgage, pledge or other acquisition or transfer of any asset or assets by or of the exempted limited partnership;
  - ▶ the incurrence or renewal of indebtedness by the exempted limited partnership;
  - ▶ a change in the nature of the business of the exempted limited partnership;
  - ▶ the admission, removal or withdrawal of a general or limited partner and the continuation of business of the exempted limited partnership thereafter; or
  - ▶ transactions in which one or more of the general partners have an actual or potential conflict of interest with one or more of the limited partners.

## MUTUAL FUNDS LAW

The establishment and regulation of most investment funds in the Cayman Islands are governed by the primary legislation, the Mutual Funds Law (2009 Revision), referred to hereafter as the Mutual Funds Law. The regulatory authority which oversees the operation of the Mutual Funds Law is the Cayman Islands Monetary Authority, referred to hereafter as CIMA.

Only those funds which fall within the definition of a “Mutual Fund” are subject to the provisions of the Mutual Funds Law.

A summary of the definition of the term Mutual Fund is:

- A company, unit trust or partnership;
- That issues shares, trust units or partnership interests that BOTH:
  - ▶ carry an entitlement to participate in the profits or gains of the fund; and
  - ▶ are redeemable or repurchasable at the option of the investor;
- The purpose of which is the pooling of investor funds to spread investment risks.

Therefore the following types of investment funds are not regulated at all by the Mutual Funds Law:

- Investment funds which provide no redemption or repurchase rights for investors (known as closed-ended funds); and
- Investment funds which issue debt interests or instruments.

Investment funds which are “Mutual Funds” but exempted from the substantive provisions of the Mutual Funds Law are those where the shares, trust units or partnership interests are held by not more than 15 investors, the majority of which are capable of removing the directors, trustee or general partner (as the case may be). A nominee owner holding an interest for multiple beneficial “investors” counts as only one investor. Certain foreign funds marketing in the Cayman Islands are also exempt.

Investment funds which need to comply with only a minimum of requirements (known as “4(3) Funds”) are those where EITHER:

- The minimum subscription per investor is at least USD 100,000 (or USD 50,000 for funds registered with CIMA before 14 November 2006); OR
- The investment fund is listed on an approved stock exchange.

The registration requirements are to file a form MFI and near-final offering document with CIMA, along with the registration fee and consent letters from the administrator and auditor. Notably, there is no requirement to have a Cayman Islands licensed administrator. Registration with CIMA normally takes a week from the date of filing.

All other investment funds which fall within the definition of a “Mutual Fund” must either:

- Apply for and be issued with a Mutual Funds License (known as “Licensed Mutual Funds”); OR
- Have its principal office in the Cayman Islands at the offices of an administrator licensed under Cayman Islands law (known as “4(1)(b) Funds”).

CIMA usually issues a Mutual Funds License between a month to six weeks after receipt of all documentation, while registration for 4(1)(b) Funds with CIMA usually takes a week from the date of filing.

For all categories of registered Mutual Funds, if a Cayman Islands licensed administrator provides administration services to such fund, the administrator must be satisfied of both the promoter’s sound reputation and the administration of the fund is being undertaken by persons of sufficient expertise and by persons who are of sound reputation. For 4(1)(b) Funds, the administrator must also be satisfied that the business of the fund and the offer of equity interests is being carried out in a proper way. For 4(1)(b) Funds, the Cayman Islands licensed administrator is required to confirm such in writing to CIMA. For Licensed Mutual Funds, additional documents need to be provided to CIMA to verify such matters.

Licensed Mutual Funds, 4(3) Funds and 4(1)(b) Funds must each ensure their annual accounts are audited by approved auditors situated in the Cayman Islands, are electronically filed by those auditors along with the Fund Annual Return form and pay the prescribed annual fee to CIMA.

All Mutual Funds must ensure their offering document describes the interests being offered in all material respects and contains 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 interest.

The vast majority of investment funds do not fall within the category of Licensed Mutual Funds or 4(1)(b) Funds as either:

- It is closed-ended, i.e., investors have no rights of redemption or repurchase during the life of the investment fund;
- There are not more than 15 investors, and the majority of which are capable of removing the directors, trustee or general partner (as the case may be); OR
- The minimum subscription per investor is at least USD100,000 and qualifies as a 4(3) Fund.

CIMA’s records at June 2010 show that of existing 4(1)(b) Funds, 4(3) Funds and Licensed Mutual Funds, over 94% are 4(3) Funds.

## The Securities Investment Business Law

The Securities Investment Business Law (2004 Revision) (referred to as SIBL hereafter) requires persons involved in securities investment business to be licensed under the SIBL, unless they or their activities fall within certain categories of excluded persons or excluded activities. In summary, SIBL provides for:

- The licensing and regulation of most activities involving securities;
- General exclusions for certain kinds of activities; and
- Limited exclusions for certain restricted classes of persons.

Of primary importance is that investment funds themselves will generally not be required to be licensed in their own right. It is far more likely that investment managers and advisers, administrators or company managers may be required to obtain a license.

SIBL applies to:

- Companies and partnerships established or registered under Cayman Islands law, including registered foreign companies; and
- Other persons who have established a place of business in the Cayman Islands.

Accordingly, foreign entities which do not establish a place of business in the Cayman Islands will not require a license under SIBL, which should exempt most non-Cayman Islands investment managers and advisers.

The provisions describing which activities and which entities require a license are extensive and shall not be commented upon in detail here. The most likely exemptions to apply are as follows:

- The business is carried on exclusively for:
  - ▶ high net worth persons being persons with:
    - ✓ net worth in excess of usd1 million; or
    - ✓ gross assets in excess of USD5 million; or
  - ▶ sophisticated persons being persons:
    - ✓ regulated by CIMA (which includes 4(1)(b) Funds, 4(3) Funds and Licensed Mutual Funds);
    - ✓ regulated by an approved overseas authority;
    - ✓ whose securities are listed on an approved securities exchange; or
    - ✓ who by virtue of knowledge and experience in financial and business matters are reasonably regarded as capable of evaluating the merits of a proposed transaction and participates in a transaction of at least usd100,000; or



- A company, partnership or trust of which all participants are either high net worth persons or sophisticated persons; or
- The person is regulated by an approved overseas regulatory authority where the securities investment business is conducted; or
- The business is carried out for members of the same corporate group – this applies where the investment manager holds the management/voting shares of an investment fund.

If these exemptions apply, the entity must only be registered as an excluded person (rather than licensed) and registration and annual fees are payable. Specific advice is required on the structure of an investment fund to determine whether exemption categories are available.

If registration or a license is required under SIBL, briefings on SIBL and the requirements to take the benefits of exemption and to apply for, and hold, a license have been prepared by Campbells and are available on request.

## Taxation

The Cayman Islands offer a location for investment funds which does not impose its own tax burden on an investment fund or its investors.

Under current legislation in the Cayman Islands, there is no capital gains tax, income tax, wealth tax, estate or inheritance tax payable in respect of either:

- The issue, transfer or realization of shares in a closed-ended or open-ended exempted company, units in an exempted unit trust or interests in an exempted limited partnership; or
- Any profits, income, gains or appreciation of the investment fund, for either the fund, or its investors in respect of their interest in the fund.

A Cayman Islands investment fund will upon application normally receive an undertaking from the Governor that no law enacted after establishment of the fund for a certain period imposing any tax on profits, income, gains or appreciations shall apply to the fund or its investors in respect of their interest in the fund. Exempted companies currently receive an exemption for a period of 20 years, while exempted unit trusts and exempted limited partnerships receive an exemption for a period of 50 years.

No stamp duty is payable on the transfer of shares, units or partnership interests in an investment fund not holding land in the Cayman Islands.

As there is no capital gains tax in the Cayman Islands, it is possible to accumulate income and realized gains tax-free in the Cayman Islands.

The Cayman Islands are free from all exchange control restrictions.

All investment funds are required to pay annual prescribed fees, the amount of which is dependent upon several issues:

- Whether it is a company, exempted unit trust or exempted limited partnership;
- What type of company it is and the authorized capital; and
- Whether it is regulated under the Mutual Funds Law.

Campbells can advise on the applicable fees for particular circumstances.

There are legal fees and other outlays in addition to establish a fund structure in the Cayman Islands.

## **ANTI-MONEY-LAUNDERING REQUIREMENTS**

For some years, the Cayman Islands have had in place comprehensive legislation and guidelines aimed at combating money-laundering practices. The principal legislation is the Proceeds of Crime Law and the Money Laundering Regulations (referred to as the Regulations hereafter) which apply to a range of business activities conducted in the Cayman Islands. These include:

- Banking or trust business by licensed persons (covering trustees);
- Mutual fund administration or the business of Mutual Funds;
- Company management by licensed persons;
- Any trading for own account or account of customer of money market instruments, foreign exchange, futures and options and exchange and interest rate instruments, and transferable securities;
- Participation in securities issues and provision of such services;
- Portfolio management and advice;
- Certain services relating to the Cayman Islands Stock Exchange; and
- The conduct of securities investment business as defined in the Securities Investment Business Law (2004 Revision).

Any of these activities could form part of the operations of an investment fund or of its service providers.

Generally, any person conducting such business activity must not carry on business unless he maintains the following procedures:

- Identification to “know your client”
- Record-keeping for dealings with investors
- Internal reporting to a designated person in certain circumstances

- Internal control and communication procedures as appropriate
- Taking of measures to make relevant employees aware of all these procedures as well as the Regulations
- Provision of staff training in the recognition and handling of suspicious transactions

The Regulations acknowledge that a number of other countries have implemented anti-money-laundering requirements which are equivalent to the standards imposed by the Regulations (such countries referred to as Approved Countries hereafter). Accordingly, where registrar and transfer agency services are undertaken by a fund administrator subject to anti-money-laundering requirements in an Approved Country, such will be deemed to suffice for Cayman Islands law. The list of Approved Countries has the vast majority of sophisticated large financial jurisdictions including the U.S. and most countries in the European Union.

Some important exemptions where full identification documentation may not be required of a prospective investor in an investment fund are as follows:

- Where the investor is a:
  - ▶ government or governmental body
  - ▶ financial institution regulated in an Approved Country
  - ▶ company quoted on an approved stock exchange
  - ▶ person already regulated by the Regulations
- Where an intermediary regulated by an overseas regulatory authority in an Approved Country has completed a form confirming they have already complied with the necessary requirements in their own jurisdiction;
- Where a client is introduced by a reputable law firm or accountant firm regulated in an Approved Country;
- The subscription monies are provided via a bank account in the investor's name in an Approved Country; and
- Where the responsibility for undertaking anti-money-laundering requirements has been delegated in certain circumstances, such as the delegate being subject to an Approved Country's rules.

Anti-money-laundering requirements have been dealt with in summary form here, and specific advice is always recommended.

## **EU TAXATION OF SAVINGS DIRECTIVE**

The Cayman Islands Government agreed with the UK Government to implement the European Union (EU) Directive on Taxation of Savings Income in the form of Interest Payments (the Savings Directive). This demonstrates the

commitment of the Cayman Islands to maintain its position as a preeminent offshore financial services jurisdiction. The Savings Directive is dealt with only in summary here; a more detailed explanation is available from Campbells Attorneys on request.

The Savings Directive requires that the countries implementing its provisions adopt one of two approaches. Either certain interest payments are reported to EU member states by the “paying agent” (reporting regime) or an amount of tax is withheld by the paying agent for forwarding to the investors’ home state authorities (withholding regime). Pursuant to this commitment, the Reporting of Savings Income Information (European Union) Law (2007 Revision) (the 2007 Law) sets out the mechanics for the implementation of a reporting regime in the Cayman Islands.

The most notable feature of the 2007 Law is that savings income from investment funds which fall within the scope of the Savings Directive only includes payments from Undertaking for Collective Investment in Transferable Securities (UCITS) funds (a European regulatory term) or their equivalent in the Cayman Islands. Cayman Islands domiciled investment funds registered under section 4(1) or 4(3) of the Mutual Funds Law, referred to as 4(1)(b) Funds and 4(3) Funds above (as nearly all hedge funds are), are treated in the same way as European non-UCITS funds under the 2007 Law. Therefore most Cayman Islands funds fall outside the scope of the Savings Directive as they are treated as non-UCITS funds. Only certain funds licensed under section 5 of the Mutual Funds Law are affected by the Savings Directive and the 2007 Law.

The paying agent is likely to be deemed to be the fund administrator in most cases. It is the paying agent that has the reporting obligations. Payments effected by the Cayman Islands hedge fund or the fund administrator will fall outside the 2007 Law if the fund administrator is located in any of the following:

- The Cayman Islands;
- A jurisdiction in which the fund administrator can rely on the Cayman Islands non-UCITS designation, the so-called “home rule test”; or
- A jurisdiction outside the scope of the Savings Directive.

However, the 2007 Law may still affect certain investors in a Cayman Islands investment fund. Where an investor is acting as nominee (a function performed by some private bankers) or otherwise as paying agent (being an economic operator who pays interest to, or secures the payment of interest for the immediate benefit of the beneficial owner) and is situated in an EU country or a country which has agreed to be subject to the Savings Directive, then the investor must consider whether payments made by them to the beneficial owner are reportable under the Savings Directive under their own laws.

## CAYMAN ISLANDS STOCK EXCHANGE

The Cayman Islands Stock Exchange (CSX) was established in 1997, in recognition of the strength of the mutual fund and structured finance sectors. The CSX is the leading offshore exchange in a North American time zone for the listing of mutual funds and hedge funds with approximately 2,000 fund listings to date, among which are several of the largest hedge funds in the world.

The advantage of a listing is that it enables certain investment institutions, which are permitted to invest only a small percentage of their assets in unlisted securities, to obtain an interest in the fund. Listing also provides a market for the shares where there is no facility to redeem.

Among other achievements for the CSX:

- In 1999, CSX became the first offshore stock exchange to be granted approved organization status by the London Stock Exchange (LSE) and as a result, securities listed on CSX are eligible for trading on the LSE's international equity market;
- In 2001, CSX and Euroclear established a link which allows CSX-listed funds to participate in Fund Settle, which is a platform designed for high volume cross-border fund transactions;
- In 2004, the Inland Revenue granted the CSX status as a "recognized stock exchange." This means that companies with securities listed on the CSX can take advantage of the "Eurobond Exemption" and interest may be paid on their securities without the deduction of UK tax.
- In 2004, securities listed on the CSX became regarded by the UK Inland Revenue as "qualifying investments." Most of the securities held directly in Personal Equity Plans and Individual Savings Accounts must be "qualifying investments." Also, among the categories of securities a personal pension scheme can hold are securities listed or dealt in on a "recognized stock exchange." Accordingly, CSX listed securities can now form part of the investments held by these personal pension schemes.

Campbells attorneys are listing agents with the CSX and are able to advise on these matters.

## TRUST COMPANIES

Any company that intends to

- carry on trust business (i.e., act as trustee) from within the Cayman Islands, OR
- act as trustee of a Special Trust Alternative Regime (STAR) trust

must hold a trust license under the Banks and Trust Companies Law (2009 Revision) (the B&TC Law).

Accordingly, a company whose name includes the word “trust” or derivations thereof may not be registered in the Cayman Islands unless it holds a trust license, or approval in principle for the grant of a trust license.

A company that intends to restrict its trust business to acting as trustee of no more than 20 specifically named and approved trusts, can obtain a restricted trust license rather than a full, unrestricted trust license. The requirements and annual fees for a restricted trust license are less onerous than those for a full trust license. This summary is limited to the requirements for obtaining a restricted trust license. Additional considerations apply for a full, unrestricted trust license.

### APPLICATION FOR A RESTRICTED TRUST LICENSE

In the Cayman Islands, trust licenses are processed and granted by CIMA.

An application for a restricted trust license, together with the application fee of KYD2,000 (approx. USD2,439), are submitted in the prescribed form to CIMA, which will examine the application and, if it meets the formal requirements, will grant the license subject to such terms and conditions, if any, as CIMA may deem necessary. Where the application is approved, the license fee of KYD7,000 (approx. USD8,536) must be paid prior to the grant of the license.

Some of the key items that must be submitted are:

#### Personal Questionnaire

All proposed shareholders, managers, controllers and directors must complete a detailed questionnaire that asks for personal particulars, as well as work experience and history.

#### References

Three reference letters (one financial reference letter and two character reference letters) are required for each director, shareholder, manager and controller application. All references must be dated within six months of receipt of the application.

## **Business Plan**

A complete and detailed business plan for the trust company must be prepared and submitted. The business plan should include the reasons for applying for a restricted trust license, details of the company's current business activities accompanied by its audited statements for the past two years (if applicable), the customer base including a completed personal questionnaire for each person that is a settlor of a managed trust and a description of the source of trust assets, the range of applicant's proposed services, a detailed statement of expected assets and liabilities, and the proposed management structure, among other details.

## **Supervisory Authorities**

If the Cayman trust company will also be subject to regulation in another jurisdiction, CIMA will require confirmation from the parent supervisory authorities that it has no objection to the applicant being licensed as a trust company in the Cayman Islands, and confirmation of consolidated supervision from the parent supervisory authority. This requirement applies even where there is no obligation imposed by the supervisory authority in question for the trust company to seek such clearance.

## **REQUIREMENTS FOR PRIVATE TRUST COMPANIES**

The Law establishes certain requirements for private trust companies that need to be met at the time of application for the trust license and thereafter. Some of the principal requirements are as follows:

### **Principal Office**

All trust companies must have both:

- Two individuals or a body corporate approved by CIMA to be its agent in the Cayman Islands, and
- An approved physical place of business in the Cayman Islands.

Generally, in the case of a private trust company, both of these requirements are met by appointing a Cayman Islands-licensed institutional trust company to administer the private trust company.

### **Net Worth Requirements**

The minimum net worth required for the holder of a restricted trust license is KYD20,000 (USD24,390) or its equivalent in another currency. Generally, this requirement is satisfied by the trust company issuing shares to an equivalent value, but other methods of funding may also be acceptable, such as a guarantee from an approved bank. The minimum net worth must be maintained during the term of the license.

## **Directors**

The trust company must have at least two directors. The directors and any change in the directors must be approved by CIMA.

## **Shareholders**

The shareholders and any changes in the shareholders of the trust company must be approved by the Governor in Council.

## **Registration in the Cayman Islands**

If the trust company is not a Cayman Islands registered company, it needs to be registered as a foreign company with the Cayman Islands Registrar of Companies under Part IX of the Companies Law.

## **RESTRICTIONS ON CAYMAN ISLANDS INCORPORATED PRIVATE TRUST COMPANIES**

A licensee incorporated under the Cayman Islands Companies Law may not change its name or open subsidiaries, branch or agency offices without CIMA's consent.

## **Auditors and Accounts**

Each trust company must appoint auditors approved by CIMA. All applicants must submit an audited balance sheet to CIMA at the time of application, and annually thereafter within 90 days of their financial year end. At the time of application for the trust license, the auditors must also file a statement that states the auditors are aware of their obligations under the Law.

## **STAR TRUSTS**

The Special Trusts (Alternative Regime) Law 1997 (STAR) created a new type of trust in the Cayman Islands, which is now referred to as a STAR trust. That law has now been incorporated into the Trusts Law (as Revised) as Part VIII.

Traditionally, English Law, on which Cayman Islands trust law is based, did not allow trusts to be established for the benefit of a purpose rather than persons. Exceptions to this rule have been developed by the law courts over the past few hundred years, notably charitable trusts. However, in the context of the modern business world and particularly complex financial transactions undertaken in the Cayman Islands, these accepted purpose trusts were not adequate. In 1997, the Cayman Islands Government brought into effect the STAR legislation. The legislation created an optional new regime for all types of trusts, whether or not purpose trusts. This distinguishes the Cayman Islands legislation from other offshore jurisdictions where legislation has allowed for purpose trusts, but such legislation does not go so far as to create a separate regime for other trusts.



## Key Features of STAR Trusts

**Enforcement.** Historically, the main difficulty under English Law with purpose trusts was that, unlike a traditional trust where beneficiaries can enforce the terms of the trust, a purpose trust had no one with that ability. In STAR trusts, the function is delegated to a person named the enforcer. The enforcer is designated by the trust deed and provision is usually made in the trust deed for changing enforcers and for successor enforcers. In a STAR trust, the enforcer is the only person that has the right to enforce the terms of the trust. No beneficiary, if any, has any rights of enforcement. Accordingly it is possible, and common, for a settlor to appoint a non-beneficiary as the enforcer or make the beneficiary's rights under the trust conditional on not challenging the trust.

**Mixed Objects.** The objects of a trust are, simply stated, the reason behind the settlor's decision to establish the trust. In most trusts the objects are the persons (i.e., the individual beneficiaries, either named or part of a group of persons) that may benefit from the trust. Alternatively, a trust object may, under English Law, be charitable or for certain limited permitted purposes. The STAR legislation provides that the objects of a STAR trust may be persons, purposes or both. This gives settlors greatly enhanced flexibility when settling their assets on a STAR trust for the ultimate benefit of perhaps their family or future generations. It also enables a "standard" discretionary trust or other trust to be established for the benefit of a settlor's family and to be governed by and have the benefits of the STAR regime.

**Perpetuities.** The rule of law known as the rule against perpetuities, which limits the potential lifetime of a traditional trust, does not apply to STAR trusts. This means that STAR trusts can continue indefinitely.

**Obsolescence.** The STAR legislation allows for the trust deed to provide a mechanism for reforming the trust and provides the Court with a *cy pres* jurisdiction similar to that which the Court could exercise in relation to charitable trusts. This means that if a change in circumstances undermines the stated purpose of a trust, it may be amended.

Due to the particular features of STAR trusts, the trustee must be or include a Cayman Islands-licensed trust corporation.

## Uses of STAR Trusts

One of the strengths of STAR trusts and reasons for their increasing use is their flexibility. Another is that the regime allows for a trust to be created where the settlor maintains a greater degree of control than he may be able to under a traditional trust. Below are some of the uses of STAR trusts Campbells has encountered:

- Where a settlor wishes some of his assets to be applied for philanthropic purposes which are not legally charitable.

- Where a settlor wants the business he has built up to be continued after his death with regular dividends paid to his family or with certain objects in mind which may not necessarily be considered by a court or trustee to be in the best interest of the ultimate beneficiaries, e.g., if the settlor wishes to encourage the company to pursue a risky business strategy or to be particularly entrepreneurial.
- Dynasty Trusts, where a settlor wishes to set up a trust which will continue indefinitely for his or her descendants.
- As the owner of shares of a special purpose vehicle so that ownership for that vehicle may be “orphaned,” whether for tax reasons or otherwise.
- As the owner of a private trust company which acts as trustee for various trusts.

## TAX INFORMATION AUTHORITY LAW

In 2005 the Cayman Islands enacted the Tax Information Authority Law (the TIA Law), now the 2009 TIA Law. The purpose of the TIA Law is to provide enforcement for the terms of a scheduled agreement (i.e., Tax Information Exchange Agreements), the provision of information in a taxation matter, and for the purpose of the provision of information in taxation matters on request to a scheduled country under Part IV, including for the purposes of any proceedings taken by parties or scheduled countries, as the case may be, or by any persons acting on their behalf, connected with, arising from, related to, or resulting from taxation matters.

## TAXATION

On the basis of present legislation, Cayman Islands companies are not subject to taxation in the Cayman Islands. There is currently no Cayman Islands Corporation, income, capital gains, profits or other taxes.

Cayman Islands exempted companies may apply for and expect to receive from the Governor-in-Council of the Cayman Islands an undertaking under section 6 of the Tax Concessions Law (2011 Revision) that for a period of 20 years from the date of the undertaking: (a) no law that is thereafter enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciation will apply to the Cayman Islands exempted company or its operations, and (b) no such tax in the nature of an estate duty or inheritance tax will be payable on the shares, debentures or other obligations of the Cayman Islands exempted company or by way of withholding in whole or in part of any relevant payment as defined in Section 6(3) of the Tax Concessions Law (2011 Revision).

Shareholders who are not otherwise subject to Cayman Islands taxes by reason of their residence, domicile or other particular circumstances should not become subject to any such taxes by reason solely of the ownership, transfer or redemption of shares of Cayman Islands exempted companies.

The foregoing summary does not address tax considerations, which may be applicable to certain shareholders under the laws of jurisdictions other than the Cayman Islands. Tax may be withheld at source in certain countries in respect of dividends paid to Cayman Islands companies.

## **TAX INFORMATION EXCHANGE AGREEMENTS (TIEAS)**

On 27 November 2001, a Tax Information Exchange Agreement (TIEA) was entered into between the government of the United Kingdom, including the Cayman Islands and the United States of America. The TIEA was signed to give effect to a commitment that the Cayman Islands had given to the Organization for Economic Development and Cooperation (OECD) on 18 May 2000 committing the Cayman Islands to a program of effective exchange of information on criminal, civil and administrative tax matters.

The most significant provisions of the TIEA are as follows:

### **Article 2: Jurisdiction**

This provides that required information shall be provided in response to a TIEA request wherever the person to whom the information relates is, and will cover information present in the Cayman Islands or in the possession or control of a person in the Cayman Islands.

### **Article 3: Taxes Covered**

The TIEA covers only U.S. federal income taxes. The TIEA can, however, be extended by agreement between the parties in the form of tax exchange letters to cover other taxes.

### **Article 4: Definitions**

The “competent authority” for the Cayman Islands which receives requests from the U.S. Internal Revenue Service (IRS) is the Cayman Tax Information Authority.

The definition of “criminal tax evasion” is important as it provides an immediate restriction on the circumstances in which the TIEA can be used for criminal tax matters. The key elements of the definition are:

- Willful, and dishonest intent on the part of the taxpayer;
- Defrauding the public revenue, evading or attempting to evade any tax liability where an affirmative act constituting an evasion or attempted evasion has occurred;

- The tax liability must be of a significant or substantial amount, either as an absolute amount or in relation to an annual tax liability; and
- The conduct involved must constitute a systematic effort or pattern of activity designed or tending to conceal pertinent facts from or provide inaccurate facts to the tax authorities of either party.

The Cayman TIEA authority will have to be satisfied that elements have all been met before a request by the IRS could proceed further through the TIEA procedure. In particular, the request for assistance can only be made by the IRS in relation to U.S. federal income taxes. The IRS will not be able to seek information for any other reason or purpose or on behalf of any other agency of the U.S. or of a foreign government.

### **Article 5: Exchange of Information Upon Request**

If a request under the TIEA is acted on and the provisions of the TIEA have been satisfied then the relevant information will have to be obtained by the requested party (in practice, this will invariably be the Cayman Islands). The requested party has the power to obtain any relevant information from the party that holds it, including financial institutions and anyone acting as nominee, trustee or in a fiduciary capacity. The information includes details of, for example, beneficial owners of companies or other legal entities and beneficiaries of trusts.

However, the relevance of the information to the request made for assistance has to be demonstrated before it will be provided. Specifically, the requesting party must provide:

- The identity of the taxpayer under examination or investigation;
- The nature of the information requested;
- The tax purpose for which the information is sought;
- Reasonable grounds for believing that the information requested is present in the territory of the requested party or is in the possession or control of a person subject to the jurisdiction of the requested party;
- To the extent known, the name and address of any person believed to be in possession or control of the information requested;
- A declaration that the request conforms to the law and administrative practice of the requesting party and would be obtainable by the requesting party under its laws in similar circumstances, both for its own tax purposes and in response to a valid request from the requested party under the TIEA.

The most important point about the above is that it clearly establishes that the IRS cannot engage in “fishing expeditions” or make general requests for information.

### **Article 7: Possibility of Declining a Request**

The competent authority of the Cayman Islands can decline to assist with a request where it is not made in conformity with the TIEA, where the IRS has not pursued all means available in the U.S. to obtain information or evidence, unless to do so will give rise to disproportionate difficulty, or where the disclosure of information would be contrary to the public policy of the Cayman Islands.

### **Article 8: Confidentiality**

The TIEA provides that information given by the IRS to the Cayman Islands competent authority in relation to a request is to be kept confidential. Any information provided to the IRS cannot be used for any purposes other than those set out in Article 1, i.e., civil or administrative tax matters or the prosecution of criminal tax evasion. The information can only be disclosed by the IRS to persons or authorities officially concerned with the latter purposes but can be disclosed in public court proceedings or judicial proceedings.

### **Article 12: Entry into Force**

For criminal tax evasion, the TIEA came into effect on 1 January 2004 and for taxable periods that commenced from 2004. For civil and administrative tax matters covered by the TIEA, the effective date was 1 January 2006 for taxable periods that commenced on January 2006.

Since the signing of the TIEA with the United States, the Cayman Islands have signed further TIEAs with the following countries:

<b>Jurisdiction</b>	<b>Date Signed</b>	<b>Date Entered Into Force</b>
Argentina	18 Oct 2011	31 Aug 2012
Aruba	20 Apr 2010	1 Dec 2011
Australia	30 Mar 2010	14 Feb 2011
Canada	24 Jun 2010	1 Jun 2011
China	26 Sep 2011	not yet in force
Curaçao	29 Oct 2009	not yet in force
Denmark	1 Apr 2009	6 Feb 2010
Faroe Islands	1 Apr 2009	not yet in force
Finland	1 Apr 2009	31 Mar 2010
France	5 Oct 2009	13 Oct 2010
Germany	27 May 2010	20 Aug 2011
Greenland	1 Apr 2009	not yet in force
Guernsey	29 Jul 2011	5 Apr 2012
Iceland	1 Apr 2009	not yet in force
India	21 Mar 2011	8 Nov 2011
Ireland	23 Jun 2009	9 Jun 2010
Japan	7 Feb 2011	13 Nov 2011
Mexico	28 Aug 2010	not yet in force
Netherlands	8 Jul 2009	29 Dec 2009
New Zealand	13 Aug 2009	30 Sep 2011
Norway	1 Apr 2009	4 Mar 2010
Portugal	13 May 2010	18 May 2011
Saint Maarten	29 Oct 2009	not yet in force
South Africa	10 May 2011	23 Feb 2012
Sweden	1 Apr 2009	27 Dec 2009
United Kingdom	15 Jun 2009	20 Dec 2010
United States	27 Nov 2001	10 Mar 2006

The above, however, is not an exhaustive list as it is expected that the Cayman Islands will continue to sign further TIEAs with more and more countries in its ongoing commitment to the OECD.

## ARGENTINA

### Negri, Busso & Fariña

Godoy Cruz 3236  
Buenos Aires CI425FQV

Federico Busso  
[federico\\_busso@negri.com.ar](mailto:federico_busso@negri.com.ar)  
Tel: +54 11 5556 8000  
[www.negri.com.ar](http://www.negri.com.ar)

## THE BAHAMAS

### Chancellors Chambers

Samana Hill, 14 Village Rd N  
Nassau N-4589

Merrit Storr  
[mstorr@ccsbahamas.com](mailto:mstorr@ccsbahamas.com)  
Tel: +1 242 394 1823  
[www.ccsbahamas.com](http://www.ccsbahamas.com)

## BOLIVIA

### Mostajo Sociedad Civil

Edificio Hilda, 12<sup>th</sup> Flr  
Av. 6 de Agosto  
La Paz

Denise Mostajo  
[denise@mostajo.com](mailto:denise@mostajo.com)  
Tel: +591 2 244 3856  
[www.mostajo.com](http://www.mostajo.com)

### Mostajo Sociedad Civil

Av. Cristobal de Mendoza No. 246  
segundo anillo ed. La Casona  
2<sup>nd</sup> Floor, #204

Santa Cruz  
Sergio Mostajo  
[lawfirm@mostajo.com](mailto:lawfirm@mostajo.com)  
Tel: +591 778 31499  
[www.mostajo.com](http://www.mostajo.com)

## BRAZIL

### Felsberg e Associados

Avenida Paulista 1294, 2<sup>nd</sup> Floor  
São Paulo, SP 01310-915

Thomas Felsberg  
[thomasfelsberg@felsberg.com.br](mailto:thomasfelsberg@felsberg.com.br)  
Tel: +55 11 3141 9100  
[www.felsberg.com.br](http://www.felsberg.com.br)

### Felsberg e Associados

Av. Almirante Barroso  
52 - 22<sup>nd</sup> Flr - Grupo 2202  
Rio de Janeiro 20031-000

David Meiler  
[davidmeiler@felsberg.com.br](mailto:davidmeiler@felsberg.com.br)  
Tel: +55 21 2156 7500  
[www.felsberg.com.br](http://www.felsberg.com.br)

### Felsberg e Associados

SCN, Quadra 05-Bloco A-Sala 1217  
Torre Norte  
Brasilia 70715-900

Nayara Cunha  
[nayaracunha@felsberg.com.br](mailto:nayaracunha@felsberg.com.br)  
Tel: +55 61 3033 3390  
[www.felsberg.com.br](http://www.felsberg.com.br)

## CAYMAN ISLANDS

### Campbells

Willow House, Cricket Square  
PO Box 884  
Grand Cayman KYI-1103

Shaun McCann  
[smccann@campbells.com.ky](mailto:smccann@campbells.com.ky)  
Tel: +1 345 949 2648  
[www.campbells.com.ky](http://www.campbells.com.ky)

## CHILE

### **Philippi, Yrarrazaval, Pulido & Brunner LTDA.**

El Golf 40, Piso 20  
Comuna de Las Condes  
Santiago 7550107

*Alberto Pulido Astoreca*  
*apulidoa@philippi.cl*  
Tel: +56 2 2364 3700  
*www.philippi.cl*

## COLOMBIA

### **Posse, Herrera & Ruiz S.A.**

Carrera 7 No. 71-52  
Torre A Piso 5  
Bogotá

*José Alejandro Torres*  
*josealejandrotorres@phrlegal.com*  
Tel: +571 325 73 00  
*www.phrlegal.com*

## COSTA RICA

### **BLP Abogados**

Via Lindora Business Center, 4<sup>th</sup>  
Flr Radial Santa Ana-San  
Antonio de Belén, Km 3  
San José

*Rafael Manzanares*  
*rmanzanares@blpabogados.com*  
Tel: +506 2205 3939  
*www.blpabogados.com*

## DOMINICAN REPUBLIC

### **Russin, Vecchi & Heredia Bonetti**

Edificio Monte Mirador, 3<sup>rd</sup> Floor  
Calle El Recodo #2  
Ensanche Bella Vista  
Santo Domingo DN

*Georges Santoni Recio*  
*gsantoni@rvhb.com*  
Tel: +1 809 535 9511 Ext. 272  
*www.rvhb.com*

## ECUADOR

### **Romero Arteta Ponce Abogados**

Av 12 de Octubre No 26-97 y A.  
Lincoln  
Edificio Torre 1492, 8<sup>th</sup> Floor  
Quito

*Diego Romero*  
*dromero@law.com.ec*  
Tel: +593 2 2986 666  
*www.ecuadorianlawyer.com*

## EL SALVADOR

### **Espino Nieto & Asociados**

83 Avenida Norte No. 138  
Colonia Escalon  
San Salvador

*Luis M. Espino*  
*luism@espinolaw.com*  
Tel: +503 2263 7522  
*www.espinolaw.com*

## GUATEMALA

### **Marroquín, Pérez & Asociados, Sociedad Civil**

3a. Avenida, 12-38, Zona 10  
Edificio Paseo Plaza Business  
Center, Of. 1002  
Guatemala City 01010

*María M. Marroquín*  
*mpemueller@mra-legal.com*  
Tel: +502 2321 1212  
*www.mra-legal.com*

## HONDURAS

### **Casco-Fortín, Cruz & Asociados**

Bldv. San Juan Bosco, contiguo a  
Citi Bank (principal)  
Edificio Torre Alianza, Suites 701-702  
Tegucigalpa

*Vanessa Velasquez*  
*vanessav@cascolaw.com*  
Tel: +504 2271 0073  
*www.cascolaw.com*



## MEXICO

### **Cuesta Campos y Asociados, s.c.**

Bismark 192 Planta Baja  
Col. Vallarta Norte  
Guadalajara, Jalisco 44690  
*Fernando J. Cuesta*  
*fcuesta@cuestacampos.com*  
Tel: +52 33 3630 0580  
*www.cuестacampos.com*

### **Cuesta Campos y Asociados, s.c.**

Montes Urales #723, Int 402, 4<sup>th</sup> Flr  
Lomas de Chapultepec  
Mexico City, D.F. 11000  
*Hugo G. Cuesta Leaña*  
*hcuesta@cuestacampos.com*  
Tel: +52 55 5540 1737  
*www.cuестacampos.com*

## NICARAGUA

### **Núñez, Rizo, Zambrana Abogados**

Edificio CAR, 3<sup>rd</sup> Floor, Suite M-7  
Managua  
*Ernesto Rizo Pallais*  
*erizo@nrzlaw.com*  
Tel: +505 2270 7353  
*www.nrzlaw.com*

## PANAMA

### **Alemán, Cordero, Galindo & Lee**

PO Box 0819-09132  
2<sup>nd</sup> Flr, MMG Tower, E 53<sup>rd</sup> Street  
Panama City  
*Jaime Alemán*  
*jaleman@alcogal.com*  
Tel: +1 507 269 2620  
*www.alcogal.com*

## PARAGUAY

### **Peroni Sosa Tellechea Burt & Narvaja**

Eulogio Estigarribia 4846  
Esquina Monseñor Bogarin  
Asunción, 1892  
*Francisco Peroni Clifton*  
*pstbn@pstbn.com.py*  
Tel: +595 21 663536  
*www.pstbn.com.py*

## PERU

### **García Sayán Abogados**

Avenida Reducto 1310 Miraflores  
Lima 18  
*Luis Gastañeta*  
*lgastaneta@garciasayan.com.pe*  
Tel: +51 1 615 0202  
*www.garciasayan.com.pe*

## PUERTO RICO

### **Fiddler González & Rodríguez, P.S.C.**

254 Muñoz Rivera Avenue, 6<sup>th</sup> Flr  
PO Box 363507  
San Juan 00918  
*José A. Acosta Grubb*  
*jacosta@fgrlaw.com*  
Tel: +1 787 753 3113  
*www.fgrlaw.com*

## TURKS & CAICOS ISLANDS

### **Miller Simons O'Sullivan**

PO Box 260, Butterfield Square  
Providenciales  
*Neil Coles*  
*NRC@msslaw.tc*  
Tel: +1 649 946 4650  
*www.msslaw.tc*

**URUGUAY**

**Posadas, Posadas & Vecino**

Juncal 1305 - 21<sup>st</sup> Flr  
Montevideo

*Juan Carlos Oreggia Carrau*  
*joreggia@ppv.com.uy*  
*Tel: +598 2 916 2202*  
*www.ppv.com.uy*



800 Hennepin Avenue, Suite 600  
Minneapolis, Minnesota 55403 USA  
+1.612.339.8680 [www.meritas.org](http://www.meritas.org)

## Prepared by Meritas Law Firms

Meritas is an established alliance of 170 full-service law firms serving over 235 markets – all rigorously qualified, independent and collaborative. Connect with a Meritas law firm and benefit from local insight, local rates and world-class client service.

[www.meritas.org](http://www.meritas.org) enables direct access to Meritas law firms through a searchable database of lawyer skills and experience.

