

# Cayman Islands funds

By Chris Humphries

The Cayman Islands continues to be the leading offshore jurisdiction for mutual funds and hedge funds. Its position as the premier jurisdiction is as a result of innovative legislation and the absence of taxation together with the presence of sophisticated and professional service providers and a favourable regulatory environment.

The Cayman Islands offers:

- A straightforward fund registration procedure.
- A flexible investment fund regime within a clear and effective regulatory environment.
- Experienced legal, administrative and accounting service providers.
- No requirement to have Cayman Islands based directors or officers, managers, administrators or custodians.
- No restriction on commercial matters such as investment objectives, trading strategies or leverage, trading or diversification limits.

The Mutual Funds Law (2013 Revision) is the principal legislation relevant to the regulation of investment funds in the Cayman Islands and it provides that a number of funds are not subject to any form of regulation in the Cayman Islands; these include:

- Funds with only one investor (as there is no pooling of investor funds);
- Closed-ended funds or private equity vehicles which do not permit redemption or repurchase of interests at the option of the investor; and
- Investment funds with no more than 15 investors, the majority of whom have the power to appoint or remove the operators of the investment fund (i.e. the directors, the general partner or the trustee, as the case may be) other than Cayman Islands regulated master funds.

There are more than 10,000 registered funds and master funds in the Cayman Islands. These regulated funds are generally designed for more sophisticated investors such as those investing US\$100,000 or more.

## Structures available

Exempted companies (incorporated with



**Chris Humphries, Managing Director, Stuarts Walker Hersant, Attorneys-at-Law**

limited liability) are the most common form of mutual fund vehicle, and are usually established in one of two ways, namely, by granting or not granting the investors voting rights in respect of their shares.

The use of a separate class of voting shares (usually issued to the promoter or investment manager) alongside non-voting shares issued to investors has the advantage for the promoter or investment manager of allowing minor changes to be made to the operating structure of the mutual fund (i.e. to the Articles of Association), without the need to call a meeting of the investors in circumstances where shares may be widely held.

Other structures used for regulated mutual funds include:

- Exempted limited partnerships, under which the investors' liability (as limited partners) is limited to their capital contributions, provided they do not take part in the conduct of the business of the partnership. Exempted limited partnerships are sometimes used in master-feeder structures but more typically for the unregulated closed-ended funds or private equity funds; and
- Unit trusts, whereby investors (or unit holders) contribute funds to a trustee which holds those funds on trust for the unit holders, and each unit holder is directly entitled to share pro-rata in the trust's assets.

## Taxation

The Cayman Islands currently has no direct taxation of any kind, including income, corporation, capital gains, withholding or death taxes. Under the terms of relevant legislation it is possible for all types of fund vehicles to apply to the government of the Cayman Islands for a written undertaking that they will not be subject to various descriptions of direct taxation, for a minimum period, which in the case of a company is currently 20 years and, in the case of a unit trust and limited partnership, 50 years. ■

**Stuarts Walker Hersant, Attorneys-at-Law has an Investment Funds Team that is a market leader in advising managers on the set-up and establishment of a broad range of investment funds in the Cayman Islands, including hedge funds, real estate funds and private equity funds.**