

Cayman Islands

Chris Humphries, Jonathan McLean and Simon Orriss

Stuarts Walker Hersant Humphries

FORMATION

Forms of vehicle

- 1 | What legal form of vehicle is typically used for private equity funds formed in your jurisdiction? Does such a vehicle have a separate legal personality or existence under the law of your jurisdiction? In either case, what are the legal consequences for investors and the manager?

An exempted limited partnership (ELP) established under the Cayman Islands Exempted Limited Partnership Act (2021 Revision) (the ELP Act) is the most commonly used structure in the Cayman Islands for forming private equity funds (PE funds). An ELP does not have a separate legal personality. An ELP must consist of the following:

- one or more persons called general partners who shall, in the event that the assets of the ELP are inadequate, be liable for all debts and obligations of the ELP; and
- one or more persons called limited partners who shall not be liable for the debts and obligations of the ELP except as provided in the partnership agreement and to the extent specified in the ELP Act.

Investors in an ELP are issued partnership interests and join the ELP as limited partners. Generally speaking, a limited partner's liability in an ELP is limited to the extent of the limited partner's partnership interests (but this limited liability status can be lost in instances where the limited partner takes part in the conduct of the business of the ELP). The general partner of the ELP is responsible for the management and conduct of the business of the ELP.

The general partner of a PE fund is usually a company or another ELP established specifically as part of the overall PE fund structure. At least one general partner of the ELP must, if a company, be registered (either as a foreign company or a Cayman Islands incorporated company) under the Companies Act (2021 Revision) of the Cayman Islands (the Companies Act) or, if a partnership, be registered (either as a foreign partnership or an ELP) under the ELP Act.

A PE fund can also be established as a company using a Cayman Islands exempted company incorporated with limited liability, which has a separate legal personality distinct from its shareholders. The exempted company is established with share capital and shares are issued to investors in consideration of investment proceeds. Each investor's or shareholder's liability is limited to the amounts unpaid on its shares, if any, or to such amount as the shareholders may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of it being wound up.

A PE fund can also be established as a limited liability company using a Cayman Islands limited liability company (LLC). The LLC is designed to be substantially similar to the form of a Delaware limited liability company and has a separate legal personality, distinct from its members. The LLC is established without a share capital and otherwise

resembles an ELP in having its members' liability limited by reference to the amounts of capital they have agreed to contribute or as otherwise stated in the operating agreement of the LLC (the LLC agreement).

Forming a private equity fund vehicle

- 2 | What is the process for forming a private equity fund vehicle in your jurisdiction?

Being a partnership, the ELP is established first by both the general partner and an initial limited partner (eg, a principal of the PE fund manager) entering into an initial limited partnership agreement. Second, by a section 9 Registration Statement (section 9 Statement) being filed with the Cayman Islands Registrar of Exempted Limited Partnerships (the Registrar) signed by the general partner of the ELP and containing the following details:

- the name of the ELP;
- the general nature of the business of the ELP;
- the address of the ELP's registered office in the Cayman Islands (legally required to be in the Cayman Islands);
- the term, if any, for which the ELP is entered into or, if for unlimited duration, a statement to that effect and the date of its commencement;
- the name and address of each general partner; and
- a declaration that the ELP will not undertake business with the public in the Cayman Islands other than so far as may be necessary for the carrying on of the business of that ELP exterior to the Cayman Islands.

There are certain supporting documents that must also be filed in respect of the general partner (eg, in the case of a corporate general partner, a Certificate of Incorporation and a Certificate of Good Standing).

Upon paying the requisite fee and filing the completed registration documents, the Registrar will issue a Certificate of Registration, which is conclusive evidence that compliance has been made with all the requirements of the ELP Act in respect of the formation and registration of the ELP.

A Cayman Islands exempted company is established by completing the following:

- filing an affidavit of the subscriber to its memorandum of association;
- filing its memorandum of association and articles of association with the Cayman Islands Registrar of Companies; and
- payment of the requisite filing fees.

An LLC is established by filing a registration statement (Registration Statement) with the Cayman Islands Registrar of Limited Liability Companies (the LLC Registrar) signed by or on behalf of any person forming the limited liability company and including the following details:

- the name of the LLC;

- the address of the LLC's registered office in the Cayman Islands (legally required to be in the Cayman Islands);
- the term, if any, for which the LLC is formed or, if for unlimited duration, a statement to that effect; and
- a declaration that the LLC will not undertake business with the public in the Cayman Islands other than so far as may be necessary for the carrying on of the business of that LLC exterior to the Cayman Islands.

The timescale and costs depend on the nature and complexity of the transaction. However, the registration of an ELP or LLC or the incorporation of an exempted company can be done on an express basis within 24 hours. Cayman Islands legal counsel will be able to provide an estimate of legal fees and disbursement costs once they have conducted an overview of the overall PE fund structure. The registration fee payable to the Registrar for an ELP is currently approximately US\$1,220. An ELP will be required to file with the Registrar a return on or before 31 January in every year and pay the Registrar a fee, currently approximately US\$2,500.

For an exempted company the registration fee will depend on the level of the authorised share capital of the company. An exempted company that falls within the lowest possible band of authorised share capital will have to pay a current incorporation fee of approximately US\$732. Similarly, an exempted company must file an annual return in January of each year and pay a fee to the Registrar of Companies, currently approximately US\$854 for the lowest band of authorised share capital.

For an LLC, the registration fee payable to the Registrar is currently approximately US\$976. An LLC will be required to file with the Registrar a return on or before 31 January in every year and pay the LLC Registrar a fee, currently approximately US\$976. At the formation stage for a PE fund, the only service providers that it is necessary to engage are a Cayman Islands legal counsel and a registered office service provider. Most law firms have an affiliated management company that can provide registered office services.

There are no material minimum capital requirements prescribed by Cayman Islands law.

A PE fund may be required to be registered as a 'mutual fund' pursuant to the Mutual Funds Act (2021 Revision) of the Cayman Islands, or as a 'private fund' as set out in the Private Funds Act (2021 Revision) of the Cayman Islands.

Requirements

- 3 | Is a private equity fund vehicle formed in your jurisdiction required to maintain locally a custodian or administrator, a registered office, books and records, or a corporate secretary, and how is that requirement typically satisfied?

There is no requirement under Cayman Islands law for a PE fund (whether structured as an ELP, an exempted company or an LLC) to have a Cayman Islands-based custodian or administrator.

The ELP is required to maintain a registered office in the Cayman Islands.

The general partner of the ELP is responsible for maintaining (or causing to be maintained) a register of security interests granted with respect to a partnership interest or part thereof indicating, among other things, the identity of the grantor and grantee, the partnership interest subject to the security interest and the date notice of the interest was served on the ELP.

The general partner is responsible for maintaining (or causing to be maintained) in the country or territory that the general partner may determine (including outside the Cayman Islands) a register of limited partners which shall contain the name and address of each person who

is a limited partner of the ELP, the date on which a person became a limited partner and the date on which a person ceased to be a limited partner, and the register shall be updated within 21 days of the date of any change in the particulars therein. The general partner shall also be responsible for maintaining (or causing to be maintained) at the registered office of the ELP a record of the address at which the register of limited partners is kept.

The general partner is also required to maintain (or cause to be maintained) in any country or territory that the general partner may determine, a record of the amount and date of the capital contributions of each limited partner and the amount and date of any payment representing a return of the whole or any part of the capital contribution of any limited partner; such record shall also be updated within 21 days of the date of any change in the particulars therein.

An exempted company is also required to maintain a registered office in the Cayman Islands, a register of mortgages and charges, a register of directors and officers and a register of members. The latter need not be maintained locally in the Cayman Islands.

An LLC is also required to maintain a registered office in the Cayman Islands, a register of mortgages and charges, a register of security interests, a register of managers and a register of members (together with a record of contributions and distributions). The register of members and record of contributions need not be maintained locally in the Cayman Islands.

Access to information

- 4 | What access to information about a private equity fund formed in your jurisdiction is the public granted by law? How is it accessed? If applicable, what are the consequences of failing to make such information available?

The register of limited partners (and address of where it is maintained) of an ELP is not open to public inspection, but instead is required to be open for inspection during all usual business hours by all partners or by any other person with the consent of the general partner. The record of contributions is only open to inspection by a person with the consent of the general partner. A copy of the section 9 Statement and any amendments made to it is publicly available for inspection upon payment of a fee to the Registrar.

Under the Companies Act, the register of members of an exempted company is not open to public inspection and is a private document. The names of directors and alternate directors contained on the register of directors of an exempted company is open to public inspection upon payment of a fee to the Registrar of Companies in the Cayman Islands. Shareholders of the exempted company are entitled to see their own details in the register of members. An exempted company is required to keep at its registered office a register of mortgages and charges specifically affecting property of the exempted company. The register of mortgages and charges is required to be open to inspection by any creditor or member of the exempted company at all reasonable times. The only publicly available information in respect of an exempted company (other than information relating to its directors and alternate directors' names) is its name, company number, date of incorporation, registered office, the type of company (eg, exempted, special economic zone, segregated portfolio company) and whether the company is active or has been dissolved or is inactive, which can be accessed via the website of the General Registry of the Cayman Islands.

Under the Limited Liability Companies Act (2021 Revision) (the LLC Act), the register of members of an LLC is not open to public inspection and is a private document. The names of managers contained on the register of managers is open to public inspection upon payment of a fee to the Registrar of Companies in the Cayman Islands. Those persons expressly given a right to inspect the LLC agreement or otherwise as permitted by the

manager of the LLC, will have the ability to inspect the register of members. Unless otherwise provided in the LLC agreement, each member has the right to inspect from time to time true and full information regarding the state of the business and financial condition of the LLC. An LLC is required to keep at its registered office a register of mortgages and charges specifically affecting property of the LLC. The register of mortgages and charges is required to be open to inspection by any creditor or member of the LLC at all reasonable times. The only publicly available information in respect of an LLC (other than information relating to its managers' names) is its name, registration number, date of registration, registered office and whether the LLC is active or has been struck off. This information can be accessed via the website of the General Registry of the Cayman Islands.

Limited liability for third-party investors

5 | In what circumstances would the limited liability of third-party investors in a private equity fund formed in your jurisdiction not be respected as a matter of local law?

The limited liability of the limited partners of an ELP (who would be the third-party investors in a PE fund) may be lost if the relevant limited partner takes part in the management or operation of the ELP. The following is a non-exhaustive list of activities that a limited partner can undertake without risking loss of its limited liability status:

- holding an office or interest in, or having a contractual relationship with, a general partner of the ELP, or being a contractor for or an agent or employee of the ELP or of a general partner of the ELP 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 ELP;
- investigating, reviewing, approving or being advised as to the accounts or business affairs of the ELP or exercising any right conferred by the ELP Act;
- acting as surety or guarantor for the ELP 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 of the ELP;
- taking any action that results in the winding up or the dissolution of the ELP;
- taking any action required or permitted in the partnership agreement or by law to bring, pursue, settle or terminate any action or proceedings brought in circumstances where the general partner has authority to do so but refuse, without good cause, to institute such proceedings;
- appointing a person to serve on a board or committee of the ELP, a general partner or a limited partner or removing such person;
- serving on any board or committee of the exempted limited partnership, a general partner, the limited partners or the partners, or by appointing, electing or otherwise participating in the choice of a representative or any other person to serve on any board or committee, or by acting as a member of any board or committee either directly or by or through any representative or other person, including giving advice or consenting, or refusing to consent, to any action proposed by the general partner on behalf of the ELP and exercising any powers or authorities or performing any obligations as a member of that board or committee in the manner contemplated by the partnership agreement;
- serving on the board of directors or a committee of, consulting with or advising or being an officer, director, shareholder, partner,

member, manager, trustee, agent or employee of, or by being a fiduciary or contractor for, any person in which the ELP has an interest or any person providing management, consultation, custody or other services or other products for, to or on behalf of, or otherwise having a business or other relationship with, the ELP or a general partner of the ELP; and

- voting as a limited partner on certain matters in relation to the ELP, for example:
 - its dissolution and winding up;
 - the purchase, sale or transfer of assets;
 - the incurrence or renewal of indebtedness;
 - a change in the nature of business;
 - the admission, removal or withdrawal of a general or limited partner; or
 - transactions in which one or more general partners have an actual or potential conflict of interest with one or more limited partners.

If a limited partner loses its limited liability status, it will be liable in the event of the insolvency of the ELP for all debts and obligations of the ELP incurred during the period that the limited partner participated in the conduct of the business of the ELP as though the limited partner was, for such period, a general partner of the ELP, provided that the limited partner shall be rendered liable only to a person who transacts business with the ELP during such period with actual knowledge of such participation and who then reasonably believed the relevant limited partner to be a general partner of the ELP.

In addition, if a limited partner receives a payment representing a return of any part of his or her contribution or is released from any outstanding obligation in respect of his or her commitment and at the time that the payment was made or the release effected the ELP is insolvent including where the payment or release causes the insolvency or the limited partner has actual knowledge of the insolvency of the exempted limited partnership, then for a period of six months commencing on the date of that payment or release but not thereafter, the limited partner shall be liable to the ELP for the amount of the payment or the due performance of the released obligation in respect of his or her commitment in each case to the extent that the repayment or performance of the released obligation is necessary to discharge a debt or obligation of the ELP incurred during the period that the contribution or commitment represented an asset of the ELP.

Unlike the ELP, the exempted company is regarded as having a separate legal personality and being an entity distinct from its shareholders. The limited liability status of shareholders of an exempted company will generally be respected. In similarity to a number of other jurisdictions, including under English law, there may be certain circumstances where a Cayman Islands court might disregard the fundamental principle that a company is a separate legal person from its shareholders and that their respective assets and liabilities are distinct. Such unusual circumstances may include where the company is considered by the courts to be used as a tool for fraud or other criminality or when a person is under an existing legal obligation or liability or subject to an existing legal restriction that he or she deliberately evades or whose enforcement he or she deliberately frustrates by interposing a company under his or her control.

An LLC is also regarded as having a separate legal personality and being an entity distinct from its members. The limited liability status of members of an LLC will generally be respected. In similarity to a number of other jurisdictions, including under English law, there may be certain circumstances where a Cayman Islands court might disregard the fundamental principle that an LLC is a separate legal person from its members and that their respective assets and liabilities are distinct, although this has never been tested in relation to an LLC. Such unusual

circumstances may include where the LLC is considered by the courts to be used as a tool for fraud or other criminality or when a person is under an existing legal obligation or liability or subject to an existing legal restriction that he or she deliberately evades or whose enforcement he or she deliberately frustrates by interposing an LLC under his or her control.

Fund manager's fiduciary duties

6 | What are the fiduciary duties owed to a private equity fund formed in your jurisdiction and its third-party investors by that fund's manager (or other similar control party or fiduciary) under the laws of your jurisdiction, and to what extent can those fiduciary duties be modified by agreement of the parties?

The general partner of the ELP is responsible under the ELP Act for the management of an ELP. In the context of a PE fund, a substantial part of this responsibility is delegated pursuant to the terms of an investment management agreement to the PE fund's investment manager. It is usually the general partner (unless otherwise delegated) that enters into contracts, deeds, instruments or other documents on behalf of the ELP. In conducting the business of the ELP, the general partner has a fiduciary duty under section 19(1) of the ELP Act to act at all times in good faith and, subject to the express terms of the partnership agreement to the contrary, in the interests of the ELP. The duty to act in the interests of the ELP can therefore be modified by the terms of the partnership agreement provided always that the general partner acts in good faith. Even where the general partner has delegated certain of its responsibilities to the PE fund's investment manager, it remains subject to this duty and therefore must retain supervisory oversight of the responsibilities delegated to the PE fund's investment manager.

The duties owed by the PE fund's investment manager will be set out in the investment management agreement between the investment manager and the ELP and may be modified in the manner set forth in the investment management agreement.

In the context of a PE fund that is structured as an exempted company, the management of the entity is vested in the directors. The duties and liabilities of directors of such company will be governed by the Companies Act as supplemented by Cayman Islands case law and English common law insofar as English common law has not been amended by statutory provisions in the Cayman Islands. English case law is considered persuasive in the courts of the Cayman Islands to the extent that there is no Cayman Islands case law to the contrary. A substantial proportion of the duties and responsibilities of directors of the PE fund (structured as an exempted company) are normally delegated to the investment manager of the PE fund under the terms of the investment management agreement.

Directors of an exempted company owe a number of fiduciary duties to the company. The fiduciary duties include the following:

- the duty to act in accordance with the constitution of the company (that is, the memorandum of association and articles of association);
- the duty to act in good faith in the best interests of the company; and
- the duty to act for a proper purpose.

The directors of an exempted company are also subject to the common law duty to undertake their functions as directors with due care, diligence and skill.

The constitutional documents of a Cayman Islands PE fund will usually contain indemnification provisions in favour of the general partner in the context of an ELP, or directors in the context of an exempted company and their respective affiliates for all liabilities, loss, damage, cost or expense, in the absence or fraud, wilful neglect or negligence (or other behaviour, such as dishonesty or gross negligence).

In the context of an exempted company, under the Companies Act, directors could also face criminal sanctions for criminal offences, including the following:

- fraud committed in the 12-month period prior to a winding up of the PE fund;
- misconduct in the course of a winding up of the PE fund; and
- making material omissions in statements relating to the company's affairs in the course of a winding up.

Subject to any express provision of the LLC agreement to the contrary, a manager of an LLC owes no duty (fiduciary or otherwise) other than a duty to act in good faith in respect of the rights, authorities or obligations of the manager. The good faith duty can be expanded or restricted, but not eliminated, by the express provisions of the LLC agreement. A member does not owe any duty (fiduciary or otherwise) to the LLC or to a member in exercising any rights or authorities, or performing any obligations, in respect of the LLC. In particular, the LLC Act provides that where a member is exercising any vote, consent or approval right, it may do so in its own best interests even though it may not be in the best interests of the LLC or any other member. The LLC Act also expressly provides that any person serving on any board or committee of the LLC may, if expressly permitted to do so by the LLC agreement, act in a manner that the person believes to be in the best interests of a particular member (even though it may not be in the best interests of all the members or the LLC).

The Cayman Islands Monetary Authority (CIMA) has issued the Statement of Guidance for Regulated Mutual Funds (the Statement), in which it sets out CIMA's expectations regarding the corporate governance regime of regulated mutual funds. In essence, CIMA expects the oversight, direction and management of a regulated mutual fund to be conducted in a fit and proper manner. Accordingly, the purpose of the Statement is to provide the governing body of a regulated mutual fund (Governing Body) and its operators (Operators) with guidance on the minimum expectations for the sound and prudent governance of the regulated mutual fund.

The Statement provides guidance for the Governing Body on matters such as:

- monitoring of a fund's compliance with applicable laws, regulations and rules;
- oversight and supervision of the service providers to the funds;
- frequency of Governing Body meetings and service provider representation at such meetings;
- reporting by the investment manager and service providers; and
- identification and recording of conflicts of interest.

The Statement also provides a non-exhaustive list of duties that CIMA considers applicable to an Operator, for example:

- ensuring it has the capacity to apply its mind to oversee and supervise each regulated fund of which it is an operator; and
- ensuring the roles and responsibilities of all service providers are clearly defined, understood and are being adequately performed.

Gross negligence

7 | Does your jurisdiction recognise a 'gross negligence' (as opposed to 'ordinary negligence') standard of liability applicable to the management of a private equity fund?

Gross negligence (as opposed to 'negligence') is not a fully recognised legal term under Cayman Islands law. However, gross negligence is often referred to in the constitutional document or agreements of a PE fund, but is usually defined either by reference to the laws of a jurisdiction that recognises gross negligence (eg, the state of Delaware in the United States) or is specifically defined in the relevant document.

Other special issues or requirements

- 8 Are there any other special issues or requirements particular to private equity fund vehicles formed in your jurisdiction? Is conversion or redomiciling to vehicles in your jurisdiction permitted? If so, in converting or redomiciling limited partnerships formed in other jurisdictions into limited partnerships in your jurisdiction, what are the most material terms that typically must be modified?

Most of the special issues or requirements particular to PE funds structured as limited partnerships are governed by the terms of the partnership agreement. Typically, the partnership agreement will contain provisions stating the following:

- a limited partner may only transfer its partnership interests subject to the express terms of such agreement;
- the general partner may appoint or remove the investment manager of the PE fund; and
- advisory committees may be created (which are internal bodies that consent to, or approve of, certain actions by the general partner), the members of which can include limited partners. Limited partners who are members of these committees should read the terms of these advisory committees carefully to ensure that actions taken via an advisory committee are not deemed to be managing the affairs of the ELP and thereby risk losing their limited liability status.

Any limited partnership established under the laws of a jurisdiction other than the Cayman Islands may (provided that the laws of the foreign jurisdiction where it is organised permit or do not prohibit such a transfer), at any time upon effecting such amendments to the partnership agreement as shall be necessary to comply with the ELP Act and upon filing the required documents, be registered under the ELP Act, transfer by continuation to the Cayman Islands and, with effect from the date of the Certificate of Registration issued by the Registrar, would then be governed as an ELP in accordance with the ELP Act.

Where a limited partnership migrates to the Cayman Islands, the ELP and the partnership interests of its partners and their rights and liabilities, as against any person who is not a partner, shall cease to be governed by the laws of the jurisdiction from which it has migrated, with effect from the date indicated on the Certificate of Registration issued by the Registrar. However, any act or omission occurring before such date shall continue to be governed by such law or the laws of such other jurisdiction, provided always that such registration of the migrated limited partnership in the Cayman Islands as an ELP shall not operate to do any of the following:

- create a new legal entity;
- affect the property previously acquired by or on behalf of the ELP;
- affect any act or thing done prior to such registration or the rights, powers, authorities, functions or obligations of the ELP, any partner or any other person prior thereto; or
- render defective any legal proceedings by or against the ELP or any partner or any other person, and any legal proceedings that could have been continued or commenced by or against the ELP or any partner or any other person before its registration hereunder may, notwithstanding such registration, be continued or commenced after such registration and in respect of which such law or the laws of such other jurisdiction shall be of application.

The partnership agreement is typically modified to reflect the requirements of the ELP Act.

A qualified transferring foreign company incorporated under the laws of a jurisdiction outside the Cayman Islands may continue by way of transfer into the Cayman Islands, provided that the laws of the foreign

jurisdiction where it is incorporated permit or do not prohibit such a transfer. Such transfer by way of continuation does not create a new company or other new legal entity. The transferring foreign company is effectively taken from the foreign jurisdiction and redomiciled in the Cayman Islands as the same legal entity, but now governed by Cayman Islands law rather than the law of the foreign jurisdiction.

A qualified transferring foreign entity formed, registered, incorporated or existing under the laws of a jurisdiction outside the Cayman Islands may continue as an LLC by way of transfer into the Cayman Islands, provided that the laws of the foreign jurisdiction where it is incorporated permit or do not prohibit such a transfer. Such transfer by way of continuation does not create a new company or other new legal entity. The transferring foreign company is effectively taken from the foreign jurisdiction and redomiciled in the Cayman Islands as the same legal entity, but now governed by Cayman Islands law as an LLC rather than the law of the foreign jurisdiction.

Fund sponsor bankruptcy or change of control

- 9 With respect to institutional sponsors of private equity funds organised in your jurisdiction, what are some of the primary legal and regulatory consequences and other key issues for the private equity fund and its general partner and investment adviser arising out of a bankruptcy, insolvency, change of control, restructuring or similar transaction of the private equity fund's sponsor?

Under Cayman Islands law, there are no statutory or regulatory consequences in this regard except that, to the extent that such bankruptcy, insolvency, change of control, restructuring or similar transaction of the private equity fund's sponsor necessitates, in the case of an ELP, a change of general partner of the ELP, a successor general partner should be appointed and the Registrar should be notified of the change in general partner. In the unlikely event that the PE fund is registered with CIMA, CIMA should be notified of the change in sponsor or a change of the PE fund's investment manager. The terms of the limited partnership agreement of the PE fund, the LLC agreement of the PE fund (where it is structured as an LLC) and the memorandum and articles of association of the PE fund (where it is structured as an exempted company) will typically assist in determining the consequences of the sponsor of the PE fund being faced with bankruptcy, insolvency, change of control or restructuring.

REGULATION, LICENSING AND REGISTRATION

Principal regulatory bodies

- 10 What are the principal regulatory bodies that would have authority over a private equity fund and its manager in your jurisdiction, and what are the regulators' audit and inspection rights and managers' regulatory reporting requirements to investors or regulators?

The principal regulatory body in the Cayman Islands for investment funds and investment managers is the Cayman Islands Monetary Authority (CIMA). The Mutual Funds Act and the Private Funds Act bring into the scope of registration with CIMA many private equity funds (PE funds) that had previously been exempt. A PE fund that has interests redeemable at the option of the investor and has more than 15 investors may need to register as a Limited Investor Fund. The Private Funds Act introduced a new class of private fund that likewise will mean that any PE funds are required to register with CIMA.

A CIMA-registered PE fund, whether registered and regulated under the Mutual Funds Act or the Private Funds Act, is required to prepare and submit annual audited financial statements to CIMA. CIMA

may require such information or such explanation in respect of the PE fund as it may wish to carry out its duties under the Mutual Funds Act. A CIMA-registered PE fund must give CIMA access to or provide at any reasonable time all records relating to the PE fund. Both the Mutual Funds Act and the Private Funds Act provide for substantial fines for failure to comply with any such requests by CIMA, and CIMA may apply to the court to have the PE fund wound up.

Unless exemptions apply, an investment manager of a PE fund may be required to obtain a licence under the Securities Investment Business Act (2021 Revision) (SIBA) if it is incorporated or registered, or has an established place of business, in the Cayman Islands.

Governmental requirements

- 11 | What are the governmental approval, licensing or registration requirements applicable to a private equity fund in your jurisdiction? Does it make a difference whether there are significant investment activities in your jurisdiction?

A PE fund may be required to register with CIMA. A PE fund is prohibited from doing business with the public of the Cayman Islands (other than so far as may be necessary for the carrying on of its business outside of the Cayman Islands).

The Cayman Islands' Director Registration and Licensing Act, 2014 (as amended) requires all directors, whether resident in the Cayman Islands or non-resident, of regulated mutual funds, certain private funds and companies that maintain a registration as an excluded person pursuant to the SIBA to register with CIMA. Persons who hold more than 20 of such directorships will need to be licensed by CIMA and will be subject to enhanced regulatory requirements. Corporate directors, irrespective of directorship numbers held, will also need to be licensed by CIMA. Therefore, all directors of PE funds registered under the Mutual Funds Act and their Cayman Islands management companies (holding a SIBA exemption) will have to be registered with CIMA. A fee is payable upon application for registration or licensing. In addition, each such director will be required to make an annual filing each year with CIMA together with the payment of a fee, and if there are any changes to the information supplied to CIMA on registration or in any subsequent annual filing, the director concerned will be required to inform CIMA within 21 days of the change.

Registration of investment adviser

- 12 | Is a private equity fund's manager, or any of its officers, directors or control persons, required to register as an investment adviser in your jurisdiction?

Investment managers that are vehicles incorporated or registered in the Cayman Islands, or any person or entity incorporated anywhere else in the world but with an established place of business in the Cayman Islands through which securities investment business is carried on, will be governed by the provisions of the SIBA and its licensing requirements.

Fund manager requirements

- 13 | Are there any specific qualifications or other requirements imposed on a private equity fund's manager, or any of its officers, directors or control persons, in your jurisdiction?

If the PE fund's investment manager is registered under the SIBA, the directors of an investment manager that is a company must be registered with CIMA or where the director holds 20 or more directorships of mutual funds or excluded persons, licensed by CIMA. Where the SIBA does not apply to an investment manager, there will be no qualifications or licensing requirements required under Cayman Islands law for the PE fund manager and its principals or directors.

Political contributions

- 14 | Describe any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure of, political contributions by a private equity fund's manager or investment adviser or their employees.

There are currently no such Cayman Islands rules or policies applicable to PE funds.

Use of intermediaries and lobbyist registration

- 15 | Describe any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure by a private equity fund's manager or investment adviser of, the engagement of placement agents, lobbyists or other intermediaries in the marketing of the fund to public pension plans and other governmental entities. Describe any rules that require a fund's investment adviser or its employees and agents to register as lobbyists in the marketing of the fund to public pension plans and governmental entities.

There are currently no such Cayman Islands rules or policies applicable to PE funds.

Bank participation

- 16 | Describe any legal or regulatory developments emerging from the recent global financial crisis that specifically affect banks with respect to investing in or sponsoring private equity funds.

There are currently no such legal or regulatory developments in the Cayman Islands applicable to PE funds.

TAXATION

Tax obligations

- 17 | Would a private equity fund vehicle formed in your jurisdiction be subject to taxation there with respect to its income or gains? Would the fund be required to withhold taxes with respect to distributions to investors? Describe what conditions, if any, apply to a private equity fund to qualify for applicable tax exemptions.

Under current Cayman Islands law, there are no Cayman Islands taxes on income or gains of the private equity fund (PE fund) or on gains on dispositions of shares or partnership interests, and distributions made by a PE fund will not be subject to withholding tax in the Cayman Islands.

As an exempted limited partnership, a PE fund has the ability to apply for, and could expect to obtain, an undertaking from the financial secretary of the Cayman Islands pursuant to the provisions of the Tax Concessions Act that for a period of 50 years from the date of exemption no law enacted in the Cayman Islands imposing any tax to be levied on profits or income or gains shall apply to it or its operations, and that any such tax or any tax in the nature of estate, duty or inheritance tax shall not be payable on the partnership interests, debentures or other obligations of the PE fund or by way of the withholding in whole or in part of any payment of divided or other distribution of income or capital by the PE fund to its partners or payments of principal or interest or other sums due under a debenture or other obligation of the PE fund. If the PE fund is structured as an exempted company, it can also apply to the financial secretary for an exemption for a period of 20 years and, if the PE fund is a limited liability company (LLC), it can also apply for an exemption for a period of 50 years.

Local taxation of non-resident investors

- 18 | Would non-resident investors in a private equity fund be subject to taxation or return-filing requirements in your jurisdiction?

No.

Local tax authority ruling

- 19 | Is it necessary or desirable to obtain a ruling from local tax authorities with respect to the tax treatment of a private equity fund vehicle formed in your jurisdiction? Are there any special tax rules relating to investors that are residents of your jurisdiction?

No.

Organisational taxes

- 20 | Must any significant organisational taxes be paid with respect to private equity funds organised in your jurisdiction?

There are currently no significant organisational taxes in the Cayman Islands. However, there are registration and annual maintenance fees payable to the government of the Cayman Islands in connection with the registration or incorporation of a PE fund in the Cayman Islands, as described previously.

Special tax considerations

- 21 | Describe briefly what special tax considerations, if any, apply with respect to a private equity fund's sponsor.

Currently, none.

Tax treaties

- 22 | List any relevant tax treaties to which your jurisdiction is a party and how such treaties apply to the fund vehicle.

The Cayman Islands has signed over 36 Tax Information Exchange Agreements (TIEAs) with other countries, of which 31 were in force as at November 2017, including most EU member states (the Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Malta, the Netherlands, Norway, Poland, Portugal, Sweden, the United Kingdom), Argentina, Aruba, Australia, Canada, China, the Faroe Islands, Greenland, Guernsey, Iceland, India, Isle of Man, Japan, Mexico, New Zealand, South Africa and the United States, and as a result, is on the Organisation for Economic Co-operation and Development (OECD) 'white list' of jurisdictions that have substantially implemented international tax standards. Essentially, TIEAs are bilateral agreements under which jurisdictions agree to cooperate in tax matters through the exchange of information. The Cayman Islands has also joined the Convention on Mutual Administrative Assistance in Tax Matters, which was developed by the OECD and the Council of Europe to combat tax evasion and aggressive tax avoidance. It provides for all possible forms of administrative cooperation between states in the assessment and the collection of taxes.

The Foreign Account Tax Compliance Act (FATCA) was introduced by the United States in 2010 as part of the Hiring Incentives to Restore Employment Act with the purpose of reducing tax evasion by its citizens. The Cayman Islands has entered into a Model 1B Intergovernmental Agreement with the United States relating to FATCA. The Cayman Islands has also introduced legislation that implements FATCA under which Cayman Islands financial institutions (which would include most funds) are required to, inter alia, conduct due diligence on their account holders (ie, investors) to determine whether they are US persons; and

report on an annual basis certain information to the Cayman Islands Tax Information Authority (TIA). The legislation permits the Cayman Islands government to exchange tax information automatically with the United States without violating Cayman Islands law.

On 16 October 2015, the Cayman Islands issued regulations relating to the Common Reporting Standard (CRS), the OECD initiative for the global automatic exchange of information for tax purposes. As with FATCA, the CRS regulations require Cayman Islands reporting financial institutions to, inter alia, establish policies and maintain procedures designed to identify reportable accounts from 1 January 2016 (which include the identification of each jurisdiction in which an account holder or controlling person is resident for tax purposes, application of certain due diligence and retention of information obtained or a record of the steps taken to comply with the CRS Regulations for six years) and file an annual report with the TIA setting out certain information on reportable accounts.

We have found that many of the sponsors of PE funds will outsource the reporting requirements imposed on them by the increased regulation to administrators or other service providers and will rely on the administrators or service providers to ensure full due diligence is conducted with respect to the investors in their funds (including the receipt of the appropriate self-certification forms from each such investor). In any event, managers should remain vigilant in their compliance with the FATCA and CRS legislation.

Other significant tax issues

- 23 | Are there any other significant tax issues relating to private equity funds organised in your jurisdiction?

Currently, none.

SELLING RESTRICTIONS AND INVESTORS GENERALLY**Legal and regulatory restrictions**

- 24 | Describe the principal legal and regulatory restrictions on offers and sales of interests in private equity funds formed in your jurisdiction, including the type of investors to whom such funds (or private equity funds formed in other jurisdictions) may be offered without registration under applicable securities laws in your jurisdiction.

A Cayman Islands private equity fund (PE fund) is not allowed to carry on business with the public of the Cayman Islands other than so far as may be necessary for the carrying on of the business of the PE fund outside of the Cayman Islands. As such, Cayman Islands PE funds are prohibited from offering shares to the public in the Cayman Islands (in the case of an exempted company) unless such shares are listed on the Cayman Islands Stock Exchange.

'Public', for these purposes, does not include a sophisticated person, a high-net-worth person, a company, partnership or trust of which the shareholders, unitholders or limited partners are each a sophisticated person, a high-net-worth person any exempted or ordinary non-resident company registered under the Companies Act (2022 Revision) of the Cayman Islands (the Companies Act) or a foreign company registered pursuant to Part IX of the Companies Act or any such company acting as general partner of a partnership registered pursuant to the provisions of the Exempted Limited Partnership (ELP) Act or any director or officer of the same acting in such capacity or the trustee of any trust registered or capable of registering pursuant to the provisions of the Trusts Act (as revised).

Types of investor

- 25 Describe any restrictions on the types of investors that may participate in private equity funds formed in your jurisdiction (other than those imposed by applicable securities laws described above).

There are currently no other Cayman Islands restrictions to describe.

Identity of investors

- 26 Does your jurisdiction require any ongoing filings with, or notifications to, regulators regarding the identity of investors in private equity funds (including by virtue of transfers of fund interests) or regarding the change in the composition of ownership, management or control of the fund or the manager?

Save where the PE fund constitutes a financial institution for the purposes of the Foreign Account Tax Compliance Act (FATCA) or the Common Reporting Standard (CRS) and is thereby obliged to make annual notification filings to the Tax Information Authority (TIA) in respect of relevant investors, there are no filings or notifications required as regards investors in an exempted company, limited liability company (LLC) or an ELP. However, the general partner must maintain a register of limited partners that is open to inspection by all partners of an ELP or by any other person with the consent of the general partner of the relevant ELP. In addition, the general partner must file a statement with the registrar of exempted limited partnerships where there has been a change in any of the information provided under the section 9 Registration Statement filing.

Where a PE fund is to be registered with the Cayman Islands Monetary Authority (CIMA), in order to effect the required registration, the PE fund is required to provide CIMA with a summary of the terms of the offering for each class of equity interests and to provide details of the various service providers of the PE fund along with a copy of its offering document. The PE fund must notify CIMA of any changes in the details of the summary of the terms of the offering and any change in the PE fund's service providers as filed on initial registration with CIMA and supply copies of any supplements to, or revision of, the offering document.

The directors of a CIMA-registered PE fund or manager holding a Securities Investment Business Act (SIBA) exemption will be required to make an annual filing together with the payment of a fee, and if there is any change to the information previously provided, the director must inform CIMA of the change within 21 days of the change.

The PE fund usually will require evidence identifying the branch or office of the bank from which subscription monies are being remitted or have been transferred, to verify that the account is in the name of the subscriber and retain a written record of such details. Normally, the PE fund and its general partner (or directors if it is an exempted company) reserve the right to request such information as is necessary to verify the identity of a subscriber. Any failure or delay by a subscriber to produce any information required for verification purposes could result in the PE fund refusing to accept the subscription application and the subscription monies relating thereto.

If any person who is resident in the Cayman Islands (including the general partner or a director) has a suspicion that a payment to the PE fund (by way of subscription or otherwise) contains the proceeds of criminal conduct, that person is required to report such suspicion pursuant to the Proceeds of Crime Act (2020 Revision).

Pursuant to the Companies Act and the Limited Liability Companies Act (2021 Revision), certain Cayman Islands companies and limited liability companies are required to maintain beneficial ownership registers at their registered offices. The information contained in

such registers is required to be stored in encrypted form on a secure standalone search platform operated by the Cayman Islands government (the Search Platform). The principal purpose of the legislation is to make beneficial ownership information normally held by corporate service providers readily accessible in response to proper and lawful requests from specified law enforcement agencies (currently only those located in the Cayman Islands or the United Kingdom). The Search Platform is not currently publicly accessible and may only be searched by the Cayman Islands authorities following a request by one of the specified law enforcement agencies.

There are various exclusions to the requirement to maintain beneficial ownership registers. The most obvious of these is that the beneficial ownership regime does not apply to exempted limited partnerships. In addition, companies or limited liability companies that are registered under the Mutual Funds Act or managed or operated by an approved person (ie, someone regulated in the Cayman Islands or another approved jurisdiction, such as the United States) as an investment fund or private equity fund (or is a general partner of such an entity). This should exclude most, if not all, private equity funds from needing to maintain beneficial ownership registers. In any event, as the threshold for registration of a beneficial owner is 25 per cent or more of the shares or interests, or voting rights, it is unlikely that a private equity fund would need to include anyone in its beneficial owners even if it were not excluded.

Licences and registrations

- 27 Does your jurisdiction require that the person offering interests in a private equity fund have any licences or registrations?

Usually, the person offering interests in a PE fund will be the investment manager or sponsor of the fund and, unless such person is domiciled in the Cayman Islands or carries on business in the Cayman Islands, there will be no requirement for that person to obtain licences or registration in the Cayman Islands provided that such PE fund is not offering interests redeemable at the option of investors and no registration with CIMA is required.

Money laundering

- 28 Describe any money laundering rules or other regulations applicable in your jurisdiction requiring due diligence, record keeping or disclosure of the identities of (or other related information about) the investors in a private equity fund or the individual members of the sponsor.

The PE fund will be subject to the provisions of the Anti-Money Laundering Regulations (2020 Revision) and Proceeds of Crime Act (2020 Revision) of the Cayman Islands. To comply with these regulations and laws aimed at the prevention of money laundering and terrorist financing, the PE fund typically requires prospective investors to provide evidence to verify their identity and other information. The general partner of the PE fund, where it is structured as an ELP or the board of directors where it is structured as an exempted company, usually reserves the right to request such information as it considers necessary to verify the identity of a prospective investor. In addition, the PE fund would also be required to appoint a money laundering reporting officer, a deputy money laundering reporting officer and an anti-money laundering compliance officer.

As Cayman Islands-based PE funds will typically be considered financial institutions, they will be required to undertake due diligence on their investors to identify whether they are US specified persons (for FATCA purposes) and where they are tax resident (for CRS purposes) and disclose certain information to the TIA.

EXCHANGE LISTING**Listing**

- 29 | Are private equity funds able to list on a securities exchange in your jurisdiction and, if so, is this customary? What are the principal initial and ongoing requirements for listing? What are the advantages and disadvantages of a listing?

It is possible for a private equity fund (PE fund) established as either an exempted limited partnership or an exempted company to apply for a listing on the Cayman Islands Stock Exchange (CSX), but it would be unusual for a PE fund to do so. The principal advantage of obtaining a listing is that the PE fund's securities would be listed on a recognised exchange, which some institutional investors may require. However, the main disadvantage would be that it would add another layer of expense and formation procedures, which may not be necessary in order to facilitate a private equity transaction. The CSX Listing Rules are available online at www.csx.com.ky, and the principal initial and ongoing requirements for listing are set out in Chapter 9 of the CSX Listing Rules.

Restriction on transfers of interest

- 30 | To what extent can a listed fund restrict transfers of its interests?

Chapter 9 of the CSX Listing Rules provides that securities must be freely transferable, but certain transfer restrictions are allowed if they are adequately disclosed and approved by the CSX, such as where transfer restrictions are required in order to avoid breaching the securities laws of any relevant jurisdictions.

PARTICIPATION IN PRIVATE EQUITY TRANSACTIONS**Legal and regulatory restrictions**

- 31 | Are funds formed in your jurisdiction subject to any legal or regulatory restrictions that affect their participation in private equity transactions or otherwise affect the structuring of private equity transactions completed inside or outside your jurisdiction?

There are currently no such restrictions under Cayman Islands law.

Compensation and profit-sharing

- 32 | Describe any legal or regulatory issues that would affect the structuring of the sponsor's compensation and profit-sharing arrangements with respect to the fund and, specifically, anything that could affect the sponsor's ability to take management fees, transaction fees and a carried interest (or other form of profit share) from the fund.

Other than the fiduciary duty of the general partner of an exempted limited partnership (ELP) to act in good faith and, subject to the express terms of the partnership agreement to the contrary, in the interests of the ELP, the duty of a manager of a limited liability company (LLC) to act in good faith (subject to the provisions of the operating agreement of the LLC) and the fiduciary duties of the directors of an exempted company, there are currently no specific legal or regulatory issues under Cayman Islands law that affect compensation and profit-sharing arrangements of a private equity fund (PE fund). The structuring of such arrangements in a Cayman Islands PE fund is usually driven by the legal or regulatory requirements of certain onshore jurisdictions.

UPDATE AND TRENDS**Key developments of the past year**

- 33 | What are the most significant recent trends and developments relating to private equity funds in your jurisdiction? What impact do you expect such trends and developments will have on global private equity fundraising and on private equity funds generally?

The Cayman Islands passed the Limited Liability Partnership Act 2017 (the LLP Act) in order to enable the use of limited liability partnerships (LLPs) in the Cayman Islands. An LLP combines the flexibility of an exempted limited partnership but has the separate legal personality of a company and affords limited liability status to all of its partners. It is anticipated that the LLP will be predominantly used in the structuring of professional firms although it may have uses in the private equity fund structuring, particularly as a general partner, manager or as a holding or 'fund of funds' partnership. The Anti-Money Laundering Regulations (2020 Revision) (AMLRs) require all entities that conduct 'relevant financial business' to, among other things, have in place various written policies and procedures (eg, customer due diligence, staff training, reporting and record-keeping) for the prevention of money laundering and terrorist financing (the Policies) and to appoint a money laundering reporting officer, deputy money laundering reporting officer and an anti-money laundering compliance officer (together, the Officers). This requirement applies to any entity that conducts 'relevant financial business', which is defined in the Proceeds of Crime Act (2020 Revision) and, crucially, has now been extended to specifically include 'investing, administering or managing funds or money on behalf of other persons'. Accordingly, all investment funds (whether registered with the Cayman Islands Monetary Authority (CIMA) or not and whether 'open ended' or 'closed ended') will need to ensure that they have adopted the Policies and appointed Officers in compliance with the AMLRs.

Administrative fines – AML

CIMA imposed its first fine under its administrative fines' regime on 10 November 2020.

Since that time, CIMA has imposed administrative fines on CIMA-licensed entities totalling approximately CI\$5 million including its largest monetary fine to date in May 2021 against a single provider in the amount of CI\$4,232,607.50. To date, all administrative fines have been imposed in respect of breaches of the Anti-Money Laundering Regulations, although CIMA has the power to impose administrative fines on body corporates and individuals under various other regulatory laws (eg, entities regulated or licensed under the Securities Investment Business Act, the Private Funds Act or the Mutual Funds Act, etc).

Administrative fines – beneficial ownership

The Cayman Islands Ministry of Financial Services issued a press release on 15 February 2021, advising that the Registrar of Companies has begun imposing administrative fines for noncompliance with beneficial ownership requirements.

As at 1 February 2021:

- Nineteen administrative fines of US\$6,098 each have been levied against companies following failures to comply with warning letters. If such fines remain unpaid, or the company continues in its failure to comply, the Registrar of Companies will remove the company from the register; and
- Eighteen warning letters have been sent to trust and corporate services providers for failure to file restrictions notices where companies have not provided beneficial ownership information.

It is likely that additional significant fines have been issued since that time.

A registered PE Fund will not be subject to the beneficial ownership requirements.

Securitisation vehicles

In May 2021, CIMA published a revised version of the CIMA Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing Guidance Notes. The purpose of the revisions was to issue sector-specific guidance in relation to special purpose vehicles (SPVs), securitisation and structured finance arrangements.

The Guidance included a specific definition of securitisation:

Securitisation is a process that involves creating new financial instruments by pooling and combining existing financial assets, typically through an off-balance sheet bankruptcy-remote special purpose vehicle (SPV), which purchases the assets using proceeds of securities issued to investors, usually in the form of debt. Payments of interest and principal on these securities are backed by the cash flow generated from the asset pool. Securitisation transactions include the issuance of collateralized debt obligations, collateralized loan obligations and asset-backed securities, as well as all other similar transactions. The term investor refers to any person or entity purchasing a security issued by the SPV, including a bondholder, noteholder, preference shareholder and unitholder.

While securitisation vehicles (other than insurance securitisation vehicles) are generally not required to be CIMA-licensed, they are subject to CIMA's anti-money laundering (AML) regime and its obligations such as:

- carrying out a risk assessment of their overall structure;
- carrying out customer due diligence (CDD) on their customers, applying simplified or enhanced CDD to certain types of customers, and monitoring customers on an ongoing basis;
- identifying beneficial owners;
- adopting and maintaining AML-combating the financing of terrorism (CFT) policies and procedures;
- reporting suspicious transactions;
- training staff;
- keeping records; and
- carrying out financial sanctions screening.

AML officers

CIMA issued a Notice on 7 June 2021 reminding all licensees and registrants of their obligation to ensure that their AML officers (the AML Compliance Officer, Money Laundering Reporting Officer and Deputy Money Laundering Reporting Officer) are aware of their respective duties and responsibilities under the Anti-Money Laundering Regulations (2020 Revision) (as amended, the AMLRs), and will act in accordance with them.

Among other points, the Notice provided a reminder that AML officers must be:

- fit and proper to conduct their role;
- suitably qualified and experienced;
- persons at management level who report directly to the board of directors or equivalent;
- natural persons;
- autonomous;
- able to have access to all relevant materials; and
- able to dedicate sufficient time for the efficient and effective discharge of their respective functions.

The Notice also reiterated that where the AML officer function is outsourced by a Cayman entity, the regulated entity retains ultimate responsibility for compliance with the AMLRs.

Sanctions

The Global Anti-Corruption Sanctions (Overseas Territories) Order 2021, adopted by the UK Parliament, came into force on 26 April 2021. This piece of legislation extends (with modifications) the equivalent UK regime under the Global Anti-Corruption (Sanctions) Regulations 2021 to all UK Overseas Territories, including the Cayman Islands.

FATF grey list

On 25 February 2021, the Cayman Islands was placed on the Financial Action Task Force's (FATF) 'grey list' of countries that are under increased monitoring in relation to their AML-CFT-counter-proliferation financing (CPF) regimes. This list relates to jurisdictions that are actively working with the FATF to address strategic deficiencies in their AML-CFT and CPF regimes, and should not be confused with the FATF 'black list' of non-cooperative jurisdictions or the EU list of non-cooperative jurisdictions for tax purposes.

The FATF acknowledged that the Cayman Islands has met 60 out of 63 its recommendations, including all technical aspects of its most recent inspection. It was also noted that the Caribbean Financial Action Task Force (CFATF) has rated the Cayman Islands as compliant or largely compliant with 39 out of 40 technical compliance points. Nonetheless, the FATF determined that, as the Cayman Islands is a major financial centre with higher risks, it should be held to a higher standard, stating that they expect 'commensurate measures from countries that have higher risks'.

The three remaining action points, which the FATF assessed as partly met, relate to enforcement by CIMA and the Registrar of Companies, and to the prosecution of money laundering offences by the Cayman Islands Bureau of Financial Investigations and the Office of Director of Public Prosecutions. These are to be addressed by January 2022 (and, in the case of evidencing effective prosecutions, May 2022).

The Cayman Islands Government has committed to working with the FATF and the CFATF to further strengthen the effectiveness of its AML-CFT-CPF regime in order to meet the three action points within the time frame. CIMA has correspondingly confirmed that it will continue to monitor regulated entities, taking prompt and robust action where appropriate.

The FATF does not require the application of enhanced due diligence measures to jurisdictions under increased monitoring. However, member jurisdictions are encouraged to take the listing into account in their risk analysis.

Since being placed on the list Cayman has already made positive progress in this regard, with the FATF's June Update to the Jurisdictions under Increased Monitoring noting the following in relation to the Cayman Islands:

- since February 2021, when the Cayman Islands made a high-level political commitment to work with the FATF and CFATF to strengthen the effectiveness of its AML-CFT regime, the Cayman Islands has taken steps towards improving its AML-CFT regime, including by applying sanctions that are effective, proportionate and dissuasive, and taking administrative penalties and enforcement actions against obliged entities to ensure that AML-CFT breaches are remediated; and
- the Cayman Islands should continue to work on implementing its action plan to address its strategic deficiencies, including by:
 - imposing adequate and effective sanctions in cases where relevant parties (including legal persons) do not file accurate, adequate and up-to-date beneficial ownership information in line with those requirements; and
 - demonstrating that they are prosecuting all types of money laundering in line with the jurisdiction's risk profile and that such prosecutions are resulting in the application of dissuasive, effective, and proportionate sanctions.'

Virtual asset service providers

The Cayman Islands Government passed the Virtual Asset (Service Providers) Act 2020 (the VASP Act) on 25 May 2020. This was accompanied by updates to a number of other laws including:

- the Monetary Authority (Amendment) (No. 2) Act 2020;
- the Securities Investment Business Act (2021 Revision);
- the Mutual Funds (Amendment) (No. 2) Act 2020 (the Mutual Funds Act); and
- the Stock Exchange Company (Amendment) Act 2020 (the Stock Exchange Act).

The definition of the term 'equity interest' in the Mutual Funds Act now includes 'any other representation of an interest', which includes the digital representation of shares or securities. This, therefore, brings PE Funds formed under the Mutual Funds Act into the scope of the VASP Act.

Although passed, the provisions relating to different matters contained in the VASP Act are being brought into effect at different times:

- phase 1: provisions of the law that relate to the registration of virtual asset service providers, enforcement, penalties or offences commenced on 31 January 2021. Persons who have not registered or notified the Cayman Islands Monetary Authority (the Authority) (by the Authority's application deadline yet to be announced), but who are engaging in virtual asset services on and after 31 January 2021 are subject to penalties and other enforcement measures; and
- phase 2: the bringing into force of the remaining provisions of the VASP Act, including the licensing requirement for virtual asset custodians and trading platform operators, the sandbox licensing regime and other elements of the VASP Act. Phase 2 was expected to begin in June 2021 but has been delayed. There is currently no update as to when phase 2 may begin.

These laws form part of a regulatory framework to promote the development and use of innovative financial services (the Framework). The Cayman Islands Ministry of Financial Services has stated that the Framework seeks to provide regulatory certainty and a solid foundation for legitimate financial services innovators who are operating in or from within the Cayman Islands, whilst also complying with emerging global standards surrounding virtual assets.

STUARTS WALKER HERSANT HUMPHRIES

Chris Humphries

chris.humphries@stuartslaw.com

Jonathan McLean

jon.mclean@stuartslaw.com

Simon Orriss

simon.orriss@stuartslaw.com

Kensington House
69 Dr Roy's Drive, PO Box 2510
George Town
Grand Cayman KY1-1104
Cayman Islands
Tel: +1 345 949 3344
Fax: +1 345 949 2888
info@stuartslaw.com
www.stuartslaw.com