

The following presentation was created by Harneys to answer frequently asked questions regarding Cayman Islands and BVI Hedge Funds.

Feel free to download and use as a reference.

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# Cayman and BVI Hedge Fund Overview

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# Cayman and BVI Hedge Funds

- Set up of Cayman and BVI hedge funds
- Ongoing obligations of Cayman and BVI hedge funds
- Hot topics

# About Harneys

Harneys is a leading international offshore law firm with a proven track record in global business and a service built around professionalism, personal service and rapid response.

- BVI, Cayman, Cyprus and Anguilla law
- 14 offices around the world
- More than 15 languages
- 45+ partners; more than 140 qualified lawyers
- Harneys Services – associated corporate and fiduciary services business



# Today's presenter



Lewis is a partner practicing Cayman and BVI law. He has established a representative office in Vancouver, Canada to service clients from the Pacific time zone. Lewis joined Harneys in 2010 as a member of the firm's Investment Funds Department and advises on the establishment and restructuring of investment funds

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# Today's presenter



James Smith is a member of the Investment Funds team in our Cayman Islands office. He regularly advises on all aspects of the set-up, operation and closure of investment funds including matters related to corporate governance, regulatory compliance and the automatic exchange of tax information. He also has particular expertise in advising on blockchain technology and fintech projects and has extensive experience in relation to ICOs, STOs and ILPs.

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# Why Cayman and BVI?

- Overseas Territories of the UK
- Stable political and economic environment
- Legal system - English common law and statute, Privy Council in London final appeal court
- OECD Whitelist etc
- Tax neutral
- **US Structuring Reasons**

# Costs

<b>Structure Costs</b>	
Cayman Company Disbursements	US\$2005 (excludes optional tax exemption cert US\$1984 and first year registered office fees of US\$1975 – pro rated quarterly), US\$2829 on-going
BVI Company Disbursements	US\$1810/US\$2560 incorporation (excludes optional fee of \$305 for a name with the word “fund” included), US\$1590/US\$2340 on-going (depends on amount of authorised shares - 50,000 shares is the cut-off)
Cayman Exempted Limited Partnership Disbursements	US\$2706 (excludes optional tax exemption cert US\$1984 and first year registered office fees of US\$1975 – pro rated quarterly), US\$3439/US\$4414 on-going (depends on whether regulated or unregulated)
BVI International Limited Partnership Disbursements	US\$1800 establishment (excludes optional fee of \$305 for a name with the word “fund” included)/US\$1540 on-going
<b>Regulatory Costs</b>	
Cayman 4(3) and 4(4) Fund Disbursements	US\$4635 registration/US\$4635 on-going (Feeder or Stand Alone) US\$3415 registration/US\$3415 ongoing (Master)
BVI Professional/Private Fund Disbursements	US\$2330 recognition/US\$1630 on-going
<b>Legal Costs</b>	
Harneys Fees	Standalone US\$10-13,000 to first close Master/Feeder US\$12,500-17,500 to first close



# Popular types of Cayman and BVI Hedge Funds

- Cayman – Open ended 4(3) and 4(4) funds
- BVI – Open ended Professional and Private funds (also Approved and Incubator Funds but not too relevant for US managed funds)
- Cayman is the largest offshore hedge fund jurisdiction (about 70% of offshore funds approximately)
- BVI is the second largest offshore hedge fund jurisdiction (about 15% of offshore funds approximately)

# Cayman 4(3) funds

- **Most popular type of Cayman hedge fund**
- **Basic requirements:**
  - Either the minimum initial investment per investor is US\$100,000 or the equity interests of the fund are listed on a recognized stock exchange
  - 2 directors (who must be registered or licensed by the Cayman Islands Monetary Authority (CIMA))
  - AML officers
  - Cayman based auditor
  - Administrator
- **Documents to submit to CIMA (all electronically):**
  - Affidavit of a director (confirming lawyers may act on the registration)
  - Offering memorandum
  - Form MF1 for a normal fund or MF4 for a master fund (they contain details of fund and service providers)
  - Consent to act letters from Cayman based auditor and from administrator
  - AML officer forms
- **Timing: registration takes effect the day the documents are submitted, first time fund takes about 2-3 months (identifying service providers, drafting docs etc.)**

# Cayman 4(4) funds

- **These used to be unregulated but are now regulated by CIMA**
- **4(4) fund are now subject to the same regulatory fees and registration process as 4(3) fund**
- **As a result we no longer anticipate much demand for 4(4) funds**
- **Two requirements:**
  - not more than fifteen investors
  - majority of investors must be able (under the constitutional documents) of appointing or removing the "operator" (i.e. the general partner or directors – depending on the structure of the relevant vehicle)

# BVI Professional Fund

- **Most popular type of BVI hedge fund**
- **Basic requirements:**
  - Investors must be “professional investors” and the minimum initial investment per investor is US\$100,000
  - A “professional investor” is a person (i) whose ordinary business involves the acquisition or disposal of property of the same kind as the property of the fund; or (ii) who whether individually or jointly with their spouse, has a net worth in excess of US\$1,000,000
  - 2 directors (not required to be registered with the British Virgin Islands Financial Services Commission (FSC))
  - Auditor, administrator, manager, custodian (exemptions may be granted by the FSC)
- **Documents to submit to FSC:**
  - Offering memorandum
  - Constitutional documents
  - Subscription agreement
  - Application form (contains details of fund and service providers)
  - Auditor consent to act letter (this can be a non-BVI audit firm)
  - BVI lawyer consent to act letter
- **Timing:** recognition takes effect on approval by FSC (3-5 business days from submission)\*, first time fund takes about 2-3 months (identifying service providers, drafting docs etc.)

\* A professional fund may carry on business for a period of up to 21 days without being recognized by the FSC

# BVI Private Fund

- **Basic requirements:**
  - no more than 50 investors or only making an invitation to subscribe for or purchase fund interests on a “private basis”
  - “private basis” includes an invitation which is made (i) to specified persons (however described) and is not calculated to result in shares becoming available to other persons or to a large number of investors or (ii) by reason of a private or business connection between the person making the invitation and the investor
  - 2 directors (not required to be registered with the British Virgin Islands Financial Services Commission (FSC))
  - Auditor, administrator, manager, custodian (exemptions may be granted by the FSC)
- **Documents to submit to FSC:**
  - Offering memorandum
  - Constitutional documents
  - Subscription agreement
  - Application form (contains details of fund and service providers)
  - Auditor consent to act letter ((this can be a non-BVI audit firm)
  - BVI lawyer consent to act letter
- **Timing: recognition takes effect on approval by FSC (3-5 business days from submission), first time fund takes about 2-3 months (identifying service providers, drafting docs etc.)**

# Ongoing Obligations

- **Regulatory**
- **Statutory**
  - Companies
  - Limited Partnerships
- **Anti Money Laundering**

# Ongoing Obligations – Cayman Regulatory

## Cayman

- **Notifications** - Material changes to be notified to CIMA within 21 days – changes to offering docs, changes to offices, changes in directors/general partner and service providers
- **Audited financial statements and an annual return** -To be filed with CIMA within 6 months of the financial year end. Typically the Cayman auditor deals with this. It is possible to apply for an extension in 1 month periods. It is also possible on rare occasions get exemptions – e.g. where fund is being wound up
- **CIMA Fees** – Due by 15 January each year and dealt with by the registered office provider. Note –there may be uncertainty re annual return fees being paid by registered office provider or Cayman auditor

# Ongoing Obligations – BVI Regulatory

## BVI

- **Notifications** - Most material changes to be notified to FSC within 14 days – changes to offering docs/constitutional docs, changes to offices, changes in directors/general partner. 7 days prior notice for a change of service provider
- **Audited financial statements and an annual return** - To be filed with FSC within 6 months of the financial year end. It is possible to apply for an extension in 3 month periods. Filing with the FSC is typically dealt with by fund manager and registered agent. It is also possible on rare occasions to get exemptions
- **FSC Fees** – Due by 31 March each year and dealt with by the registered agent



# Ongoing Obligations - Statutory - Companies

- **Director and Shareholder registers**
  - **Cayman** - Director register must be kept at the registered office and changes need to be filed with the Registry within 30 days, Shareholder register may be kept off Island but needs to be available if the tax authority asks
  - **BVI** - Director and Shareholder registers may be kept off Island but copies must be provided to the registered agent. Changes to the director register need to be filed with the Registry within 30 days
- **Amendments to M&As**
  - **Cayman** - Adopted on resolution approving amendment (must be filed with the Registry in due course)
  - **BVI** - Adopted on filing with the Registry
- **Annual Fees**
  - **Cayman** - Due in January each year
  - **BVI** - Due in May or November depending on date of incorporation
- **Annual Return** - only required in Cayman and due January each year (confirms compliance with undertaking not to do business with the public in Cayman)

# Ongoing Obligations - Statutory - Limited Partnerships

- **Registers** - BVI and Cayman limited partnerships must maintain a register/record containing the name and address, amount and date of the contributions of each partner and the amount and date of any payment representing a return of any part of the contribution of any partner. In the BVI copies of register must be provided to the registered agent
- **Notifications**
  - **Cayman** - Changes in (a) the name of the partnership; (b) the general nature of the business of the partnership; (c) registered office; (d) term; (e) name or address of general partner; (f) general partner
  - **BVI** - Changes in (a) the name of the partnership; (b) the objects and purposes of the partnership; (c) registered office or registered agent; (d) term; (e) name or address of general partner; (f) general partner
- **Books and Accounts**
  - **Cayman** - keep proper books of account including material underlying documentation including contracts and invoices, with respect to (a) all sums of money received and expended, (b) all sales and purchases of goods and (c) the assets and liabilities of the partnership
  - **BVI** - keep and maintain records and underlying documentation that (a) are sufficient to show and explain the limited partnership's transactions and (b) will, at any time, enable the financial position of the limited partnership to be determined with reasonable accuracy
- **Annual Fees**
  - **Cayman** – Due in January each year
  - **BVI** – Due in April each year
- **Annual Return** – only required in Cayman and due January each year (confirms compliance with undertaking not to do business with the public in Cayman)

# Ongoing Obligations – Anti Money Laundering

- Five main categories: (a) maintain client identification procedures; (b) keep “know your client” and suspicious transaction records; (c) establish reporting procedures for suspicious transactions; (d) have in place internal controls, policies and procedures to prevent money laundering (including audit of such systems); (d) AML training for staff; (e) appoint AML officer(s)
- BVI funds can delegate these functions out to a third party service provider in a jurisdiction with an equivalent AML regimes so that compliance with that regime will be regarded as compliance with the BVI regime
- Cayman funds can outsource to a third party service provider and rely on such third party service provider’s policies and procedures as long as the fund is must be satisfied that those policies and procedures will enable it to comply with the requirements of the Cayman regime
- **Cayman AML officer roles:** Anti-Money Laundering Compliance Officer, Money Laundering Reporting Officer and Deputy Money Laundering Reporting Officer
- **BVI AML officer role:** Money Laundering Reporting Officer

# FATCA and CRS

## **FATCA Reporting Deadlines**

- 31 May each year in Cayman and BVI (although extensions had been granted this year)

## **Officers**

- FATCA Responsible Officer is required to register for a Global Intermediary Identification Number with IRS
- Principal Point of Contact to liaise with the ITA or TIA, as applicable
- Authorising Person (for Cayman funds but not BVI funds)

# Hot Topics

- Cayman Data Protection Law
- Regulation of closed ended funds in Cayman and BVI

