



管理人设立离岸基金 参考指南及清单

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引言

设立离岸基金前需进行周密规划，并存在不少重要流程与考虑事项。

迈普思集团（COPFA 专业、操守和治理工作小组的成员）根据当前亚洲地区的行业实践编制了一个全面且实用的清单，旨在协助中资海外私募基金协会（简称“COPFA”）管理人了解离岸基金的设立流程。

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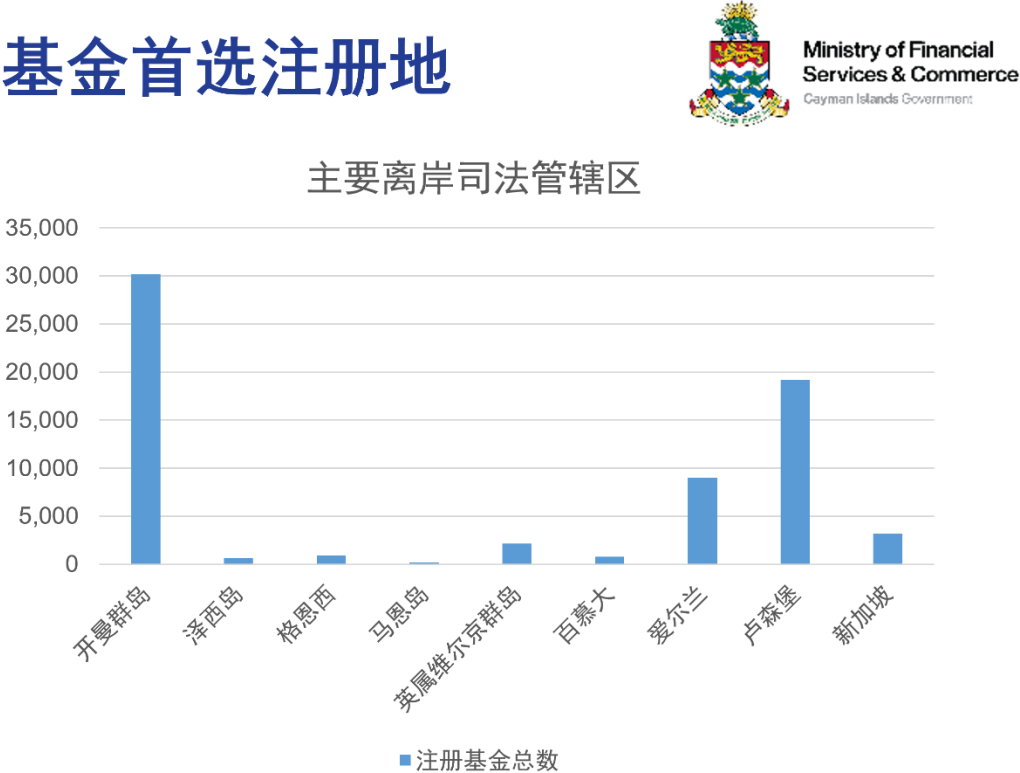
1. 选择注册地

基金注册地的选择是非常重要的决定。税收效率（tax efficiency）、当地监管架构的完善程度、与基金投资策略的匹配度，以及该地区的市场声誉和经济稳定程度，都是在决定过程中需要重点考虑的关键因素。

开曼群岛长期以来一直被公认为设立投资基金的首选司法管辖区，吸引了世界各地的基金发起人、管理人及投资者青睐。目前开曼群岛注册的投资基金超过 30,000 个，管理的资产总值突破 8 兆美元。

开曼群岛凭借其被投资者广泛认知的优势、备受全球认可与信赖、税收中立、高效便捷、收费低廉、高度灵活、稳定且高度透明等特点，一直是首选的基金注册地。

因此，本清单重点列明了在开曼群岛注册的投资基金（简称“基金”）的设立要求。



数据来源：CIMA、JFSC、GFSC、IOMFSA、BVI FSC、BMA、CBI、ALFI、MAS（截至 2024 年第四季）

2. 法律架构

基金类型	确定基金类型。可选择对冲基金（hedge fund）、私募股权基金（private equity fund）、虚拟资产基金（virtual assets fund）、创投基金（venture capital fund）等，或根据管理人资产类别选择其他基金类型。
实体类型	开曼群岛提供多种实体以设立基金，包括： a) 获豁免公司（Exempted Company） b) 独立投资组合公司（Segregated Portfolio Company） c) 有限责任公司（Limited Liability Company） d) 获豁免有限合伙企业（Exempted Limited Partnership） e) 单位信托（Unit Trust）

3. 服务提供商

根据离岸基金的具体类型，聘请各类服务提供商及交易对手方协助完成基金设立、持续运营及支持整体绩效等是有必要的。主要涉及以下服务提供商 / 交易对手方：

a) 开曼群岛法律顾问 （Cayman Islands Counsel）	于开曼群岛注册的基金必须聘请开曼群岛法律顾问提供有关基金架构调整及持续运营的法律意见、监管合规咨询、基金实体设立及注册等法律服务。开曼群岛法律顾问通常会向基金出具《法律服务聘用函》。
b) 牵头法律顾问（Lead Counsel）	管理人及 / 或基金投资决策团队需就 (i) 管理人注册地及持牌经营地；及 (ii) 基金权益分配所涉司法管辖区，获取有关法律、架构调整及监管合规的初步及持续建议，以确保基金遵守各相关司法管辖区的法律要求。牵头法律顾问通常会向基金出具《服务聘用函》。
c) 合规顾问（Compliance Consultant）	管理人可能需要聘请合规顾问协助办理当地监管机构审批及牌照申请事宜（有关详情，请参见下一部份）。合规顾问通常会向基金出具《服务聘用函》。
d) 税务顾问（Tax Adviser）	于开曼群岛注册的基金无需缴纳直接税款（direct taxes），但管理人仍须就收取管理费及业绩报酬的结构优化事宜咨询税务顾问，以确保在管理人相关在岸司法管辖区实现最优税务安排。
e) 行政管理人 （Administrator）	基金通常需要聘请独立的行政管理人处理基金的会计、申报和投资者服务，包括资产净值评估。行政管理人须受列明行政管理人聘用条款和条件的《行政管理协议》约束。基金需要行政管理人出具《同意函》以明确接受聘任。
f) 审计师（Auditor）	所有受监管的互惠基金必须从开曼群岛金融管理局（简称“CIMA”）核准的审计机构名录中选聘独立审计师，主要负责对基金财务报表实施年度审计工作，并对基金会计及内部监控进行管理。审计师在接受聘请前需与基金签订《服务聘用函》，并必须签署《同意函》以明确接受聘任。

g) 托管人 (Custodian)	托管人的主要职责在于确保基金资产安全，并对相关资产实施专业托管，确保资产得到准确的核算及适当的处置。托管人须受列明托管人聘用条款和条件（如适用）的《托管协议》约束。
h) 主经纪商 (Prime Broker)	主经纪商通常提供托管服务，也面向对冲基金等客户提供证券借贷服务。当投资策略涉及互换及衍生品时，通常需要签订《主经纪协议》和《国际互换与衍生品协议》，以规范互换与衍生品的交易。
i) 技术系统供应商 (Technology Systems Vendor)	技术系统供应商通常提供数据管理、投资组合管理、风险监控和交易指令管理。基金需要与选定的技术系统供应商签订《服务协议》。
j) 银行 (Bank)	银行在基金的设立与运营中扮演着关键角色。每家基金必须开立专用银行账户，用于接收投资者的认购款 / 出资款、日常运营费用的支付，以及向投资者退回赎回款 / 分配款。
k) 独立董事 (Independent Directors)	根据惯例，基金运营者的董事会应当由占多数的独立非执行董事构成。这些独立董事可能位于管理人所在司法管辖区，也可能在其他司法管辖区（例如就于开曼群岛注册的投资基金而言，其独立董事常驻开曼群岛）。基金的独立董事需要通过基金与独立董事或专业独立董事服务机构签订的《董事服务协议》聘任。
l) 反洗钱专员 (Anti-Money Laundering (AML) Officers)	反洗钱专员主要负责掌握金融监管与合规框架，并依据反洗钱相关义务管理反洗钱工作与流程。基金通常需要签订《反洗钱服务协议》以聘请反洗钱专员提供相关服务，协助基金履行其在开曼群岛反洗钱制度下的义务。
m) 保险经纪 (Insurance Broker)	建议为基金及管理人的运营者和高级管理人员（包括董事）配置专业保险保障。具备丰富投资基金行业服务经验的保险经纪可协助管理人评估并筛选适合的保险方案，包括专门针对董事及高级管理人员的保险方案。
n) 董事会支持服务及公司秘书服务 (Board Support and Company Secretarial Partner)	这类行业合作伙伴可安排及统筹董事会会议出席事宜、及时向参会人员发送会议通知及议程文件、提供电话会议及 / 或视频会议详情、妥善准备并向参会人员安全传送董事会会议文件包、准备每次会议的决议事项清单，以及编制及最终确认会议纪录等。
o) 配售代理 (Placement Agent)	配售代理或分销商履行外包服务提供商的职能，协助募集资金。此外，配售代理通过各类投资银行及其他专业金融服务机构为基金引入资金，协助完成资金募集工作。

4. 监管合规

a) 开曼群岛基金的监管	开曼群岛投资基金若是开放式基金（即允许投资者赎回的基金），通常由 CIMA 根据经修订的《互惠基金法》（Mutual Funds Act (as revised)）（简称“《互惠基金法》”）进行监管；而封闭式基金（即不允许投资者赎回的基金），一般由 CIMA 根据经修订的《私募基金法》（Private Funds Act (as revised)）（简称“《私募基金法》”）进行监管。
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	开曼群岛法律顾问（请见上文）可为基金就开曼群岛相关注册及持续合规制度的要求提供建议。
b) 在岸当地牌照	管理人需在其相关在岸司法管辖区取得正式牌照或接受监管。目前，金融服务监管机构包括： a) 香港：证券及期货事务监察委员会（简称“证监会”） b) 新加坡：新加坡金融管理局（Monetary Authority of Singapore）（简称“MAS”）；及 c) 迪拜国际金融中心：迪拜金融服务管理局（简称“DFSA”）。 牵头法律顾问及合规顾问（请见上文）可协助基金经理申请相关在岸牌照，以及向其提供相关建议及持续支持。
c) 反洗钱	基金必须遵守《反洗钱规例》中有关打击恐怖份子融资及大杀伤力武器扩散融资的开曼群岛反洗钱制度，并实施反洗钱政策和程序，以及委任“反洗钱合规人员”（AML compliance officer）、“反洗钱汇报人员”（money laundering reporting officer）及“副反洗钱汇报人员”（deputy money laundering reporting officer）。 反洗钱专员（请见上文）可就上述事宜提供持续指导。
d) “了解您的客户”（Know Your Customer）	必须制定“了解您的客户”（简称“KYC”）流程，以识别基金投资者的身份。 行政管理人（请见上文）可协助基金符合对其投资者的KYC要求。
e) 《美国海外账户税收合规法案》（FATCA）/《共同汇报标准》（CRS）	开曼群岛基金必须注册为金融机构，并根据开曼群岛实施《美国海外账户税收合规法案》（简称“FATCA”）和经济合作与发展组织（OECD）规定自动交换税务信息的《共同汇报标准》（简称“《CRS》”）的法例进行申报。 行政管理人或税务顾问（请见上文）可协助基金符合其适用的自动交换信息要求。
f) 实益拥有权制度	根据实益拥有权法例和实益拥有权条例，开曼群岛基金必须维护其实益拥有权登记册。该登记册需详细记载基金的所有实益拥有人信息，或者选择指定一名与实益拥有人相关联的获授权联系人。 开曼群岛法律顾问（请见上文）可为基金就其在实益拥有权制度下适用的要求提供建议。
g) 《开曼群岛金融管理局规则》（CIMA Rules）	CIMA 可能会不时推行适用于互惠基金及 / 或私募基金的各项规则和指引，包括《公司治理规则》（Rule on Corporate Governance）、《内部监控规则》（Rule on Internal Controls）、《资产分隔规则》（Rule on Segregation of Assets）和《资产价值计算规则》（Rule on Calculation of Asset Values）。 开曼群岛法律顾问（请见上文）可协助基金遵守上述要求，并提供建议。
h) 董事注册和发牌制度	互惠基金公司（corporate Mutual Fund）的董事必须于 CIMA 官网上完成注册登记。只有在董事完成注册程序后，该基金公司才能在 CIMA 注册为互惠基金公司。

	开曼群岛法律顾问（请见上文）可协助董事遵守上述要求，并提供建议。
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5. 基金文件

a) 募资文件	通常称为“PPM”（private placement memorandum）或类似名称。此类募资文件详细说明了基金权益发售的所有关键信息，包含基金策略、风险因素、服务提供商、费用和条款等一切关键信息，以方便潜在投资者能够基于充分信息就认购或购买权益与否作出投资决策。
b) 组织章程文件	根据基金设立所采用的实体类型而使用《组织章程大纲细则》/《有限责任公司协议》/《有限合伙企业协议》/信托契约等组织章程文件。
c) 认购文件	投资者参与基金认购所需的文件。
d) 赎回文件	投资者申请赎回基金份额的相关文件（如适用）。
e) 基金设立协议	基金运营者需通过有关基金设立的董事会决议，以批准基金设立事项、协议签订、各种服务提供商的委任，以及其他相关事宜。
f) CIMA 申请表	必须在 CIMA 申请表内列明基金、其服务提供商及反洗钱专员的详细信息，并向 CIMA 提交。
g) 《同意函》	审计师及行政管理人分别同意接受基金聘任的《同意函》（如适用）。
h) 合约	上文第(3)部分所述的各种交易对手方合约。
牵头法律顾问将与开曼群岛法律顾问紧密合作，协助您准备基金设立和流程所需的文件，并提供专业指导。	

6. 基金发行与持续管理

a) 员工	聘请合格的员工，以管理基金的投资职能、运营（包括聘请具备丰富经验的运营总监（首席运营官））、合规和投资者关系。
b) 初始资金募集	需完成首轮资金募集，以达到基金的最低投资门槛。
c) 合规监测	持续监测基金是否遵守监管要求和内部政策。
d) 业绩报告	定期向投资者提供业绩报告，包括资产净值的计算及财务报表。
e) 风险管理	实施全面的风险管理体系，以识别、评估及降低风险。

此清单旨在为拟设立离岸基金的管理人提供指导和说明。所提供的内容不构成任何法律意见。在实际开展基金设立工作前，建议您寻求专业的服务和建议。

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本文乃其英文版本的中文译本，仅供参考。如有歧义，概以英文版本为准。



OFFSHORE FUND LAUNCH GUIDANCE NOTE AND CHECKLIST FOR INVESTMENT MANAGERS

May 2025

Offshore Fund Launch Guidance Note and Checklist for Investment Managers

Introduction

Setting up an offshore fund requires careful planning and attention to a range of important steps and considerations.

This document provides a comprehensive and practical checklist, prepared by the Maples Group, to guide COPFA investment managers through the launch process based on current industry practices across Asia. The Maples Group is a member of the COPFA Competency, Ethics and Governance Working Group.

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1. Jurisdiction Selection

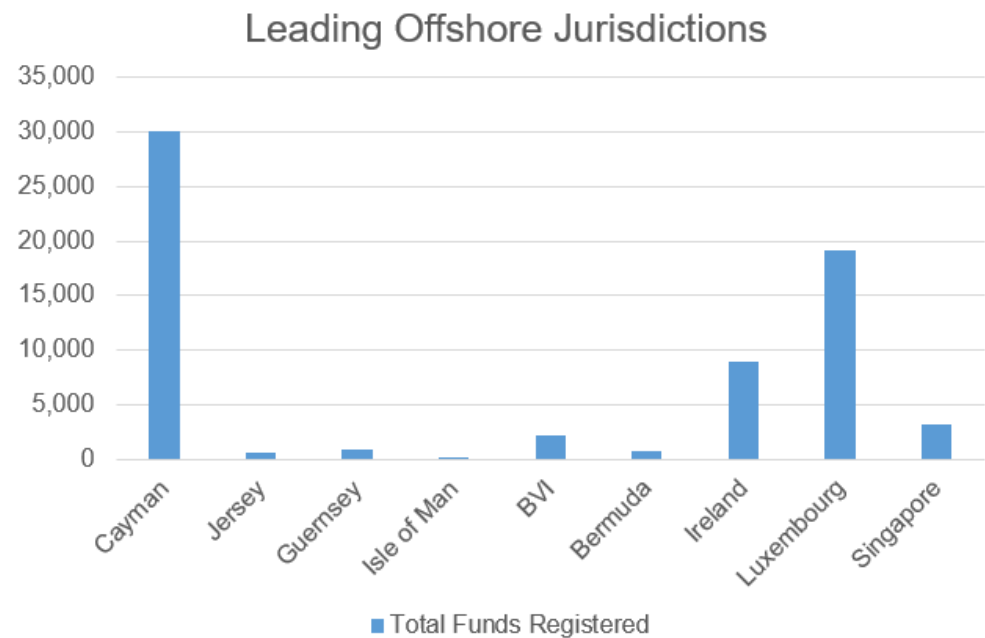
Your selection of fund domicile is a critical decision, with tax efficiency, the robustness of the jurisdiction's regulatory framework, alignment with your fund strategy, reputation, and economic stability are all crucial considerations in this decision-making process.

The Cayman Islands has long been recognised as a pre-eminent jurisdiction for the establishment of investment funds. Attracting promoters, investment managers and investors from around the globe, there are over 30,000 investment funds registered in the jurisdiction, managing assets worth more than US\$8 trillion.

The Cayman Islands remains a premier destination for fund domiciliation, owing to its investor familiarity, global recognition and trust, tax neutrality, speed, cost effectiveness, flexibility, stability and transparency.

Accordingly, for the purpose of this checklist, we have focussed on the launch requirements for an investment fund domiciled in the Cayman Islands (the "Fund").

A Leading Domicile for Funds



Sources: CIMA, JFSC, GFSC, IOMFSA, BVIFSC, BMA, CBI, ALFI, MAS (as of Q4 2024)

2. Legal Structure

Fund Type	Decide on the type of Fund. This may be a hedge fund, private equity fund, virtual assets fund, venture capital fund, or otherwise depending on the asset class as determined by the Investment Manager.
Entity Type	The Cayman Islands offers multiple vehicles through which to structure a Fund, including: a) The Exempted Company b) The Segregated Portfolio Company c) The Limited Liability Company d) The Exempted Limited Partnership e) The Unit Trust

3. Service Providers

Depending on the specific type of offshore fund, various service providers and counterparties are typically engaged to support the Fund's launch, ongoing operation, and overall performance. These include:

a) Cayman Islands Counsel	A Cayman Islands domiciled Fund must appoint a Cayman Islands counsel to assist with the provision of relevant structuring and ongoing legal advice, regulatory advice, formation of the Fund vehicles and registration of such Fund vehicles. An engagement letter is typically issued by the Cayman Islands Counsel to the Fund.
b) Lead Counsel	The investment manager and/or personnel who will be making the investment decisions of the Fund will need to seek initial and ongoing legal, structuring and regulatory advice in connection with the jurisdiction where (i) such investment manager is based and licensed and (ii) where the Fund interests will be distributed to ensure local laws are adhered to. An engagement letter is typically issued by the Lead Counsel to the Fund.
c) Compliance Consultant	An investment manager may also require the assistance of a compliance consultant to obtain relevant regulatory approval or licensing from the local regulator (see next section for further information). An engagement letter is typically issued by the Compliance Consultant to the Fund.
d) Tax Adviser	A Fund that is domiciled in the Cayman Islands is not subject to direct taxes. However, it is important for the Investment manager to seek tax advice on optimal structuring of the receipt of management fees and performance fees for tax efficiency in the relevant onshore jurisdiction where the Investment manager may be based.
e) Administrator	A Fund will typically appoint an independent administrator to handle the Fund's accounting, reporting, and investor services, including net asset valuations. They will be subject to an Administration Agreement outlining the terms and conditions of their appointment and a consent letter from the Administrator will be required.

f) Auditor	All regulated mutual funds must appoint an independent auditor from the list of firms who are approved by CIMA to conduct annual audits of the Fund's financial statements and manage accounting internal controls. The Auditor will sign an engagement letter with the Fund and must sign an auditor consent letter in advance of appointment.
g) Custodian	The custodian safeguards the Fund's assets and manages the underlying assets by ensuring they are properly accounted for and processed correctly. They will be subject to a Custody Agreement outlining the terms and conditions of their appointment (where relevant).
h) Prime Broker	The prime broker typically provides custodial services and also securities lending is offered to hedge funds and similar clients. A prime brokerage agreement and an ISDA is often entered into to promote the trading of swaps and derivatives where such instruments are involved as part of the investment strategy (where relevant).
i) Technology Systems Vendor	Such service provider will often provide data, portfolio, risk and order management. A services agreement is entered into between the Fund and the relevant vendor.
j) Bank	This counterparty is critical to the launch and operation of the Fund as each Fund must have a bank account to, as a minimum, receive subscription moneys/capital contributions from investors, pay ongoing expenses and to make redemption payments/distributions back to the investors.
k) Independent Directors	It is customary for each board of the operator of a Fund to comprise a majority of independent, non-executive Directors. Such Directors may be based in same jurisdiction as the investment manager or otherwise in other locations such as the Cayman Islands for a Cayman Islands domiciled investment fund. Such independent Directors are appointed by the Fund pursuant to a Director Services Agreement entered by the Fund with the independent Director or the entity providing the services of such independent Director.
l) Anti-Money Laundering (AML) Officers	Such persons are generally responsible for understanding of financial regulations and compliance framework who manages AML programs and processes under the relevant AML obligations. An AML services agreement is typically entered into by the Fund to appoint AML Officers to provide certain services in connection with the Fund's obligations under the Cayman Islands AML regime.
m) Insurance Broker	It is recommended that the operators and officers of the Fund and Investment manager (such as the Directors) are duly insured accordingly. An insurance broker with expertise working in the investment funds industry will be able to assist the Investment manager to assess and select appropriate insurance policies including a Directors and Officers insurance policy.
n) Board Support and Company Secretarial Partner	Such industry partners may include scheduling and coordinating attendance at meetings, disseminating notices and agendas to participants, providing teleconference and/ or video conferencing details, preparing and securely delivering board packs to meeting

	participants, preparing an action point list from each meeting and preparing and finalising meeting minutes.
o) Placement Agent	Such placement agents or distributors perform the function of outsourced service providers to assist with raising capital. Capital raising may also be sourced from capital introductions made by various investment banks and similar financial services organisations.

4. Regulatory Compliance

a) Cayman Islands Fund Regulation	Cayman Islands investment funds are generally regulated by CIMA under the Mutual Funds Act (as revised) (the "Mutual Funds Act") if they are open-ended (where participating equity interests are redeemable by investors) or the Private Funds Act (as revised) (the "Private Funds Act") if they are closed-ended (where participating equity interests are not redeemable at the choice of the investor). <i>The Cayman Islands Counsel mentioned above can advise on the relevant registration and ongoing compliance regime required in the Cayman Islands</i>
b) Onshore Local Licence	The investment manager will need to be duly licensed or regulated in the relevant onshore jurisdiction where the investment manager is based. For current purposes, the financial services regulators are as follows: a) Hong Kong: the Securities and Futures Commission (the "SFC"); b) Singapore: the Monetary Authority of Singapore (the "MAS"); and c) Dubai International Financial Centre: Dubai Financial Services Authority (the "DFSA"). <i>The Lead Counsel and Compliance Consultant as set out above can assist in advising and obtaining the relevant onshore licence and provide ongoing support.</i>
c) Anti- Money Laundering ("AML")	Funds must comply with the Cayman Islands AML regime countering the financing of terrorism and proliferation financing contained in the AML Regulations, which require the implementation of AML policies and procedures and the appointment of an AML compliance officer ("AMLCO"), money laundering reporting officer ("MLRO") and deputy money laundering reporting officer ("DMLRO"). <i>The AML Officers mentioned above can advise on this subject on an ongoing manner.</i>
d) "Know Your Customer" ("KYC")	KYC processes must be established to identify the identify of incoming investors to the Fund. <i>The Administrator mentioned above can assist with KYC requirements of investors for the Fund.</i>
e) FATCA / CRS	Cayman Islands funds must register as a financial institution and report under the Cayman Islands legislation implementing the Foreign Account Tax Compliance Act of the United States ("FATCA") and the

	OECD's Common Reporting Standard ("CRS"), which requires the automatic exchange of information for tax purposes ("AEOI"). <i>The Administrator or tax adviser mentioned above can assist with AEOI requirements applicable to the Fund.</i>
f) Beneficial Ownership Regime	The BO Legislation and BO Regulations require Cayman Islands funds to maintain a beneficial ownership register detailing any beneficial owners of the Fund, or alternatively, elect an authorised contact in relation to same. <i>The Cayman Islands Counsel mentioned above can advise on the requirements of the Beneficial Ownership Regime, as applicable to the Fund.</i>
g) CIMA Rules	CIMA may introduce various rules and statements of guidance from time to time which apply to either or both of Mutual Funds and/or Private Funds. These include the Rule on Corporate Governance, Rule on Internal Controls, Rule on Segregation of Assets and Rule on Calculation of Asset Values. <i>The Cayman Islands Counsel mentioned above can advise on the manner in which to comply with these requirements.</i>
h) Directors Registration and Licensing Regime	A Director of a corporate Mutual Fund must be registered with CIMA on the CIMA portal before such Mutual Fund is registered as such with CIMA. <i>The Cayman Islands Counsel mentioned above can advise the Directors on the manner in which to comply with these requirements.</i>

5. Fund Documentation

a) Offering Documentation	Often named the "PPM" or private placement memorandum or similar document, such offering documentation details the equity interests which are being offered in all material respects and contains all such information necessary to enable a prospective investor to make an informed decision as to whether or not to subscribe for or purchase the interests. It typically outlines the Fund's strategy, risks, service providers, fees and terms.
b) Constitutional Documentation	Constitutional Documents in the form of a Memorandum and Articles of Association / LLC Agreement / Limited Partnership Agreement / Trust Deed (as applicable depending on the type of vehicle through which the Fund is structured).
c) Subscription Documentation	Documentation through which investors will subscribe to the Fund.
d) Redemption Documentation	Documentation through which investors will redeem from the Fund (where relevant).
e) Fund Launch Agreements	Launch board resolutions of the operators of the Fund approving the launch of the Fund, entry into any agreements and the appointment of the various service providers, amongst other matters relating to the launch of the Fund.

f) CIMA Application	CIMA application form including the details of the Fund, its service providers and AML officers to be filed with CIMA.
g) Consent Letters	Consent letters of the Auditor and Administrator agreement to their respective appointments to the Fund (where relevant).
h) Contracts	Various counterparty contracts as set out in Section (3) above.
<i>The Lead Counsel together with the Cayman Islands Counsel will guide you through the documentation required to be prepared for the Fund launch and the process.</i>	

6. Launch and Ongoing Management

a) Staffing	Hire qualified staff to manage the Fund's investment functions, operations (including a strong and experienced Chief Operating Officer), compliance and investor relations.
b) Initial Capital Raise	Conduct the initial capital raise to meet the Fund's minimum investment threshold.
c) Compliance Monitoring	Continuously monitor compliance with regulatory requirements and internal policies.
d) Performance Reporting	Provide regular performance reports to investors, including net asset value (NAV) calculations and financial statements.
e) Risk Management	Implement a comprehensive risk management framework to identify, assess, and mitigate risks.

This checklist is intended to serve as a guide and explanatory note for investment managers who are considering launching an offshore fund. The information provided does not constitute legal advice; professional services and advice should be obtained before commencing the process of launching a Fund.

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