Considerations for Canadian Managers Operating Non-Canadian Funds

How to Start and Grow a Successful Hedge Fund in Canada

by Gwyneth Rees and Jeremy Bomford, Maples and Calder, Cayman Islands

Expanding Offshore

When a Canadian hedge fund manager has built up a successful track record using a domestic Canadian fund vehicle, as a logical next step it may wish to use the same investment strategy to attract international investment.

This will generally involve setting up an offshore fund structure. The Cayman Islands, in particular, have established themselves as a pre-eminent centre for this type of work, with the majority of the world's hedge funds being domiciled in the jurisdiction (estimates typically range between 70% and 80%). The Cayman Islands model, based on tax neutrality and professional efficiency, has been reviewed extensively by managers, investors and their advisors over the years and is regarded as a tried and tested solution, robust enough to withstand the challenges of the 2008 financial crisis and the subsequent market turbulence.

Fund Structuring

The offshore hedge fund structure most commonly used for non-US and US tax-exempt investors is the Cayman Islands corporate fund (ie, the exempted company), either as a standalone vehicle or as part of a master-feeder structure. The traditional master-feeder structure for a hedge fund will typically involve a Cayman Islands corporate feeder fund (for US tax exempts and non-US investors) and a Delaware limited partnership as a US pass-through feeder fund (for US taxable investors), each investing into a Cayman Islands corporate master fund (which makes the appropriate election to be regarded as transparent for US tax purposes). The master fund will generally hold all the assets and carry out the trading activities in this structure.While there can be variations on the theme (for example to ensure management and performance fees/allocations can be taken out in the most tax-efficient manner) this common structure generally allows international investors with different tax treatments to invest in the same fund in a tax-efficient manner for all concerned. In addition to these tax efficiencies, the consolidation of investment capital in the master fund increases the level of overall fund assets and so can reduce trading and operational costs through economies of scale.

The Canadian Dimension

When establishing an offshore hedge fund for a Canadian manager, two key issues to address from the outset will be the 'mind and management' of the fund and whether the fund is carrying on business in Canada as a result of the Canadian management. Under Canadian tax legislation, there is a 'safe harbour' provision which specifies designated investment services that may be carried on by the Canadian manager of an offshore hedge fund without risk of causing the fund to be carrying on business in Canada and thereby subjecting the fund to Canadian tax. These designated investment services include investment management and advice with respect to qualified investments. However, any activities constituting mind and management control of the fund occurring in Canada, such as general governance authority, would fall outside the safe harbour provision and also could cause the fund to be resident in Canada, and thus taxable there.The precise tax analysis can differ as between different Canadian advisors, and it is important that managers work closely with their legal counsel and tax advisors to obtain the appropriate advice on Canadian tax issues. For example, there may be sensitivities around the location of the other service providers to the fund (eg, the administrator), the board of directors of the fund (and master fund), and the holder(s) of any

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non-participating voting shares in the fund, among other things. Canadian tax advisors will generally advise that not only must ultimate legal control reside outside of Canada, but that *de facto* control must also be maintained outside Canada, and to that end certain advisors will recommend that as many services as possible be provided outside of Canada for Canadian-managed offshore hedge funds. This is generally achieved by implementing the following types of measures:

(a) appointing an administrator and other service providers for the fund that are located in the Cayman Islands or another jurisdiction outside of Canada;

(b) appointing a board of directors for the fund that comprises at least a majority (if not all) independent directors that are not resident in Canada (there are a number of providers of professional independent directors based in the Cayman Islands);

(c) ensuring that the fund's governance takes place outside of Canada; and

(d) where the fund issues participating non-voting shares to investors, having the non-participating voting shares in the fund (typically referred to as 'founder' or 'management' shares) held independently of the fund manager and its affiliates - for example, arrangements would typically be made for the voting shares to be held in charitable trust and particular care should be taken to ensure that the charitable trust documentation satisfies the requirements that independence and control are maintained outside of Canada.

In addition, restrictions apply in relation to the promotion and sale of shares in the fund to Canadian investors, so the Canadian fund manager may not want to admit its Canadian investors directly into the Cayman Islands fund it manages. In certain circumstances it may be possible to establish a blocker fund, or series of blocker funds, to address this concern.

Canadian Tax Treaties and Cayman Enterprise City

Historically, Canada has had strong links with Barbados due to its double tax treaty with the jurisdiction, which essentially allowed certain profits made by a Barbadian foreign affiliate of a Canadian resident corporation to be repatriated to Canada tax-free after paying lower taxes in Barbados. The Cayman Islands signed a Tax Information Exchange Agreement with Canada which became effective on 1 June 2011, effectively allowing the same practice as between a Cayman Islands resident foreign affiliate and its Canadian resident corporate parent (as a result of the Cayman Islands being considered a designated treaty country for the purposes of the Income Tax Act of Canada). The advantage in using the Cayman Islands, however, is that there is no tax payable at the Cayman Islands stage of the process (unlike Barbados), nor are there any exchange control restrictions or regulations in the Cayman Islands.

The Cayman Islands has also established a special economic zone, known as Cayman Enterprise City (the CEC), where Canadian businesses may quickly and easily set up a substantive offshore base with a real corporate presence and 'mind and management' in the Cayman Islands. The CEC comprises a number of specialist business parks, aimed at the internet, technology, academic, media, film, biotech, and commodities and derivatives industries, and combines the tax and jurisdictional benefits of the Cayman Islands with a number of government-mandated measures designed to attract new business (including exemptions from work permits, taxes and import duties, and a guaranteed 10-day, fast-track set up of operations). Accordingly, the Cayman Islands offers significant opportunities for Canadian businesses looking to establish a tax-neutral offshore presence in a designated treaty country.

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Cayman Islands Management Companies

For managers looking to form a Cayman Islands-domiciled management company but without a physical presence in the Cayman Islands in the CEC, an alternative is to take advantage of the streamlined licensing regime available in the Cayman Islands under the Securities Investment Business Law (SIBL).

Where the Cayman Islands management company conducts its operations mainly outside the Cayman Islands and provides investment management services exclusively to a Cayman Islands hedge fund registered with the Cayman Islands regulator, being the Cayman Islands Islands Monetary Authority (CIMA), it will typically be able to avail itself of an exemption from the full licensing regime under SIBL in return for filing an annual declaration with CIMA and paying an annual fee (approximately US$6,000 at current rates).

The Cayman Islands fund management company would, in addition, be required to maintain anti-money laundering procedures that comply with the Cayman Islands regime, including reporting suspicious activity and the appointment of a Money Laundering Reporting Officer. These procedures can be delegated to a suitable third party, provided that the delegation is formalized in an appropriate agreement.

Regulatory Framework and Compliance (Initial and Continuing Requirements)

'Mutual funds' have been regulated in the Cayman Islands since 1993. Under the Cayman Islands legislation, the term 'mutual fund' in fact equates to 'investment fund', rather than equating to regulated retail funds (which is the US context for the term). Only 'mutual funds' that carry on business in or from the Cayman Islands are subject to regulation by the Cayman Islands authorities. Responsibility for such regulation rests with CIMA.

What is a 'mutual fund' under Cayman Islands law?

Under the Mutual Funds Law (2013 Revision), a 'mutual fund' is defined to mean any company, unit trust or partnership (wherever established) which issues equity interests redeemable at the option of the investor, the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and enabling investors to receive profits or gains from investments. In a typical Cayman Islands master-feeder structure, both the feeder fund and the master fund will generally be 'mutual funds' for these purposes (unless an exemption applies – see below).

Although the Cayman Islands definition is a wide one, some investment funds are still excluded from the definition and, consequently, from regulation. Funds that do not qualify as a 'mutual fund' include closed-ended funds (where the investors cannot redeem at their own option), single investor funds that are not master funds to a CIMA regulated feeder fund (because there is no 'pooling of investor funds') and funds that issue debt rather than equity interests.

Is a fund carrying on business from the Cayman Islands?

Subject to the exemption referred to below, funds established in the Cayman Islands are subject to regulation and foreign funds will be caught by the regime if they are carrying on business from the Cayman Islands. It is a question of fact whether a fund is carrying on business from the Cayman Islands, although funds which (irrespective of their domicile) make an invitation to the public in the Cayman Islands to subscribe for interests will be caught by the regime.

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What funds are specifically exempted from regulation?

Not every fund that carries on business from the Cayman Islands is required to be regulated by CIMA. If the number of investors is conveniently small and control of the mutual fund lies with the investors or if appropriate regulation is already in place (ie, the fund is listed or regulated by an entity recognized by CIMA and marketed by a CIMA regulated entity) the fund may qualify for an exemption from registration under Section 4(4) of the Mutual Funds Law.

Types of Regulated Funds

Regulated funds in the Cayman Islands fall into three categories:

(a) registered funds;

(b) administered funds; and

(c) licensed funds.

Administered funds and licensed funds have no minimum investment thresholds, but more onerous registration and licensing requirements – they are aimed more towards the retail investor. Since sophisticated and institutional investors have been, and remain, the focal point of the Cayman Islands funds industry, the majority of funds fall to be regulated as registered funds under Section 4(3) of the Mutual Funds Law.

Essential Requirements to Qualify for the Regime

A fund qualifies under Section 4(3) if:

(a) the minimum initial investment per investor is at least US$100,000 or the equivalent in any other currency; or

(b) the equity interests are listed on a recognized stock exchange.

Provided the initial investment amounts to US$100,000 or more, subsequent investments can be made in smaller increments and interests may be redeemed, withdrawn or repurchased leaving an invested amount of less than US$100,000.

Registrations / Permits / Licences Required

No prior approval is required for the registration of a fund falling within Section 4(3). The registration process is straightforward and the statutory requirements are satisfied simply by filing the appropriate documentation and payment of the appropriate fee (see details below). There is no consideration or assessment period and, provided the appropriate documents have been filed and the fee paid, the fund will be registered immediately and automatically as a regulated mutual fund. Once registered, the fund is able to market its interests and accept subscriptions without delay.

Once the documents have been filed, CIMA will actively review them and may require additional information from the fund, require amendments to the documentation or take other appropriate steps. Recently, CIMA has taken a very proactive role in reviewing documents and seeking further information.

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Documents it is Required to File

Subject to any exemption that is specifically granted, the documents to be filed in order to register a typical feeder fund or standalone fund as a regulated fund under Section 4(3) are:

(a) an offering memorandum;

(b) the Form MF1;

(c) a copy of the certificate of incorporation of the fund;

(d) a written consent of both the fund's administrator and the fund's auditor confirming acceptance of their appointment by the fund; and

(e) an affidavit in support of registration from a director of the fund, together with certain details (place of birth, date of birth, email address) for all directors of the fund.

The documents to be filed in order to register a master fund under Section 4(3) are:

(a) the Form MF4;

(b) a copy of the certificate of incorporation of the master fund;

(c) the master fund offering memorandum – but only if there is one; and

(d) a written consent of both the master fund's administrator and auditor confirming acceptance of their appointment by the master fund – these may be included in the same consent letter as for the regulated feeder fund where the administrator and auditor are the same for both and the filings are made at the same time.

The offering document must describe the equity interests in all material respects and contain such other information as is necessary to enable a prospective investor to make an informed decision whether or not to invest. While the Mutual Funds Law does not specify detailed contents requirements, CIMA has developed its own checklist for use in reviewing the offering document and which, in practice, constitutes mandatory requirements. Most well drafted offering documents should, however, contain the relevant information as a matter of course.

Registration / Permit / Licence Fees – Initial, Ongoing and Upon Termination

The fee payable on registration is currently US$4,268 for a typical Cayman Islands feeder or standalone fund, and US$3,048 for a typical Cayman Islands master fund. In each case, the registration fee covers the balance of the calendar year in which the fund is registered.

Thereafter, the prescribed annual registration fees, also US$4,268 or US$3,048 (as applicable) at current rates, are payable on or before 15 January in each year until the fund de-registers as a mutual fund or its status is formally changed to 'license under termination' or 'license under liquidation', whereupon it will be partly or wholly released from the obligation to pay fees. There is also an annual filing fee of US$365 payable in connection with the filing of the fund's annual return and audited accounts with CIMA. Formal steps must be taken with respect to any de-registration or change in status and, until those steps have been taken, the obligation to pay fees continues irrespective of whether the fund is actually conducting business, and there are penalties for late payment.

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Requirements for Local Service Providers

There are only two statutory requirements as to the use of local service providers: the registered office and the auditor of a registered fund must both be based in the Cayman Islands.

Since almost all Section 4(3) funds carry on business mainly outside the Cayman Islands, the registered office requirement is usually fulfilled by retaining a registered office provider who will assist in making government and regulatory filings.

There are no further requirements for local service providers to be appointed by the fund, and onshore administrators or custodians may be appointed.

Requirements as to Directors

In the context of a Cayman Islands corporate fund, there are no statutory requirements as to board composition, residency or as to the number of board meetings to be convened each year. However, as a matter of policy, CIMA requires the fund to have a minimum of two directors who are natural persons and are identified in the offering document, and the fiduciary duties owed by the directors require them to hold as many meetings as are necessary for the fund to operate effectively. CIMA has also issued further guidance on corporate governance matters for the funds it regulates (see further below on this).

Operating and Selling Restrictions

There are no restrictions on a Section 4(3) fund's investment objectives or policies, risks, rates of return or its power to borrow (other than those the fund chooses to set out in its offering materials and constitutional documents), nor is there any requirement for annual shareholder/investor meetings. The sophisticated investors at which these products are aimed are left free to make their own determination as to whether or not to invest, and generally the marketing and selling of these products will be according to the securities laws and regulations of the relevant investor's own jurisdiction. In this way, the Cayman Islands avoids imposing the expense and administrative burdens of such regulation directly on the funds. No offer or invitation to subscribe for interests in the fund may be made to the public in the Cayman Islands (unless such interests are listed on the Cayman Islands Stock Exchange) but the 'public' in the Cayman Islands does not include 'sophisticated persons', 'high net worth persons' or various exempted Cayman Islands entities.

Ongoing Obligations – CIMA Related

Financial Reporting

All mutual funds must, unless specifically exempted, file audited accounts signed off by a Cayman Islands-based auditor within six months of the financial year-end. For funds which register in the second half of their financial year, it is possible to avoid the administrative burden and expense of an audit at the end of the first trading year, by electing for an initial fiscal year end which ends up to 18 months (but no more) from the date of registration.

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CIMA also requires that each registered fund file a Fund Annual Return (FAR) form with the annual audited accounts in electronic format. The electronic FAR form, containing a summary of basic information about the fund, is filed annually by the fund's local auditors, although the operators of the fund remain responsible for the accuracy of the contents of these forms.

Fund Documentation

No annual updates are required to the fund's constitutional documents or offering materials. However, where there is a continuing offering of securities or interests, a fund will be deemed not to be compliant with the relevant provisions of the Mutual Funds Law where there are any material changes in the information contained in the offering memorandum or in the prescribed details filed with CIMA and the updates are not filed with CIMA within 21 days of the fund's promoter or operator becoming aware of the material changes. Where there is a change in registered office or operator, both the appropriate Cayman Islands Registry and CIMA should be informed and the relevant registers must be updated within 30 days of the change, failing which penalties will be incurred. Where there is a change to the auditor or administrator, a consent letter signed by the newly-appointed auditor or administrator will also need to be filed with CIMA.

Anti-Money Laundering (AML)

Regulated funds have ongoing AML obligations, although this function will commonly be delegated to the fund's administrator, since it is the administrator that, in practice, will be receiving and processing subscriptions for the fund, including the necessary 'know your client' information required under applicable AML laws. In delegating the AML function in this way, the fund must ensure that:

(a) the administrator agrees under the administration agreement to take responsibility for AML;

(b) the administrator does so on behalf of the fund (not just itself); and

(c) the administrator is either in the Cayman Islands or a country recognised as having equivalent AML requirements to the Cayman Islands, is subject to that country's AML requirements and agrees to conduct AML in accordance with that country's requirements.

Other Requirements

CIMA may, from time to time, seek specific information in respect of a particular fund or funds generally, including for AML purposes or to respond to a request from a fellow regulator in another jurisdiction (eg, CIMA has memoranda of understanding and other information-exchange agreements with financial regulators in various countries, including Canada, the UK and the US).

In addition, as noted above, there are prescribed procedures which must be followed in order to deregister a regulated fund, failing which the above reporting and filing requirements continue to apply regardless of whether the fund has, as a practical matter, ceased operations.

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Additional Ongoing Obligations

Cayman Islands hedge funds must conduct their affairs in accordance with their constitutional documents and the requirements of the law generally. These will include fiduciary duties of the directors plus statutory obligations to the fund, namely:

(a) to keep proper books and records;

(b) to notify the Cayman Islands Registrar of changes in name or other registered details;

(c) to file annual returns and pay annual fees; and

(d) in the case of exempted companies, to maintain the relevant registers (eg, of directors and officers, shareholders, mortgages and charges over company property) at the fund's registered office in the Cayman Islands.

Taxation

The Cayman Islands have no direct taxes of any kind. There are no income, corporation, capital gains or withholding taxes, nor are there any death duties. Under the terms of relevant legislation it is possible for the fund to register with, and apply, to the government of the Cayman Islands for a written undertaking that it will not be subject to various descriptions of direct taxation, for a minimum period, which in the case of an exempted company is usually 20 years. In addition, there are no exchange control restrictions or regulations in the Cayman Islands (unlike many other jurisdictions, including some of the Cayman Island's offshore competitors) so monies can be freely transferred in and out of the Cayman Islands, subject to anti-money laundering laws and regulations.

Cayman Islands hedge funds therefore provide a tax-neutral base in which to combine investors from a number of jurisdictions investing in assets located in the same or other jurisdictions. This neutrality is often important because it provides a level playing field for all investors and avoids creating a vehicle in a jurisdiction that may favour some investors more than others. This does not affect investors' obligations to pay tax in their jurisdiction of residence: it simply removes what would otherwise be an extra layer of foreign taxation at a particular level of the structure.

In addition, the Cayman Islands is a co-operative and transparent jurisdiction in relation to the exchange of tax information. It has signed 34 Tax Information Exchange Agreements (of which 27 have been brought into force), with a further 16 agreements in negotiation. It has laws that require automatic reporting to EU tax authorities on Cayman Islands bank accounts held by EU residents. Cayman Islands authorities co-operate with governments worldwide to ensure that the Cayman Islands cannot be used to evade home country taxes. The Cayman Islands Government is actively co-operating on initiatives such as the US Foreign Account Tax Compliance Act (FATCA), the Organisation for Economic Co-operation and Development Convention on Mutual Administrative Assistance in Tax Matters, and the G5 countries' pilot project on the automatic exchange of tax information.

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Recent Cayman Islands Developments

Governance

The conduct of the business of a Cayman Islands hedge fund is the ultimate responsibility of its board of directors in the case of a company. In practice, however, since a hedge fund will typically have no employees, the board of directors will delegate the day-to-day management and administration functions to professional third-party service providers - ie, the investment manager, administrator, prime broker/custodian, etc. These service providers will report to the board, which will periodically meet to discuss/review the performance of these delegates and the fund generally.

The role of the board of directors of a Cayman Islands hedge fund was considered by the Cayman Islands Grand Court in its landmark judgment released on 26 August 2011 in *Weavering Macro Fixed Income Fund Limited (in liquidation) v Peterson and Ekstrom*. This was the first time the Court had specifically considered the duties of independent non-executive directors of an offshore hedge fund and the judgment made clear that the Court takes the issue of hedge fund governance very seriously.

Whilst it was common ground in the case that the directors, being independent non-executive directors, had a 'high level supervisory role' to perform, the judge also made a series of statements about the duties of hedge fund directors and how they should be discharged throughout the various stages of the life of a fund. Directors are expected to be proactive, make their own enquiries and not simply react to whatever problems or issues may be brought to their attention by the other service providers, with emphasis being placed on the need for proper documentation evidencing how the directors are discharging their duties to the fund.

CIMA, as the Cayman Islands hedge fund industry's regulator, issued its final form Statement of Guidance on Corporate Governance for Regulated Mutual Funds (SOG) on 13 January 2014, following a consultation process with industry stakeholders. The SOG is intended as non-exhaustive guidance for fund directors and operators on CIMA's minimum expectations for the sound and prudent governance of a CIMA regulated fund. It outlines key management oversight principles, including CIMA's expectations in relation to directors' duties, frequency of board meetings and risk management, while recognizing that there is no 'one size fits all' answer, such that the adequacy and suitability of a particular fund's governance structure will need to reflect the actual circumstances of that fund (eg, its size, nature and complexity).

While not directly enforceable law, the contents of the SOG do echo a number of principles covered in the Weavering judgment mentioned above, and is further evidence of the importance accorded to having proper corporate governance practices in place from the outset. In addition, in March 2014, CIMA announced its proposals for a new regime for the registration of directors of CIMA regulated funds (and certain other covered entities) and the licensing of professional and corporate directors of such entities. At the time of writing (mid-April 2014), the new regime is expected to be passed into law and brought into force in the Cayman Islands imminently.

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Liquidity Issues

Funds are generally well advised to include broad and flexible language in their organizational documents to permit the directors latitude in how to deal with fund liquidity issues, depending on the investment strategy being used and what is appropriate in the context. For example, so called 'side pocket' provisions may be included if there is a significant likelihood as a result of the chosen strategy that certain assets in the portfolio may be, or become, illiquid or difficult to value. However, before the 2008 financial crisis this was not common practice for most hedge funds, and in the absence of suitable side-pocket provisions in the fund's organizational documents (or any prospect of obtaining investor consent to allow for them) alternative solutions had to be found to deal with illiquid assets.

The mechanisms employed as solutions to such liquidity problems can be broadly grouped into two categories:

(a) those which completely or partially restrict the investors' ability to exit from the fund (such as gates and suspensions); and

(b) those which enable redeeming investors to exit the fund, but allocate the illiquidity *pro rata* between both redeeming and continuing investors (such as payments in-kind and reserves/hold-backs).

There have been various well reported decisions in this area over the last few years, for example the Matador and Strategic Turnaround cases[1] in relation to suspensions and redemptions, and the Wyser-Pratte and Heriot cases[2] in relation to commercial (or so-called 'soft') wind-downs of funds. A key message from each is that considerable care must be taken in drafting a hedge fund's organizational and offering documents so that they clearly state the investors' entitlements on redemption and clearly state the fund's powers to restrict and/or deal with such entitlements, and management's power to wind-down the fund, in the event of extreme illiquidity or other extraordinary circumstances.

Side Letters

Hedge funds and their managers are sometimes asked to enter into a side letter granting special (generally preferential) terms to a particular, potentially significant, investor in order to persuade that investor to invest in the fund.

Side letters often give rise to complex issues that require a careful analysis of the relevant documents and surrounding circumstances in any particular case. For a side letter to be valid and binding on a fund, the directors must have the power to enter into such a side letter in the articles of association. Care should also be taken to make sure that the fund contracts with the appropriate party: under Cayman Islands law a person that is not a party to a contract generally may not enforce that contract, or have that contract enforced against them, directly. Recent case law has highlighted the importance of getting this right[3]. At the time of writing a new law is expected to be brought into force shortly, which, when in force, will allow for enforceable third-party rights to be provided for under Cayman Islands law governed contracts.

In addition, (i) the side letter must not contravene any of the terms of the articles of association of the fund or Cayman Islands law generally; and (ii) the directors of the fund must act at all times in compliance with the general duties (including fiduciary duties) which they owe to the fund and the other investors in the fund in deciding whether or not to enter into a side letter with a specific investor. Furthermore, the relevant offering materials should make specific disclosure of the intention to issue side letters and the specific nature of their proposed content.

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Any breach of these basic propositions may result in the side letter being unenforceable or place the fund in a position where it will breach the terms of the side letter or the articles of association. In extreme cases, the directors could be liable for breach of duty if the fund can show that loss resulted from the actions of the directors.

Even where a fund's governing documents expressly grant the directors of the fund a broad power to enter into side letters, they are still bound by a general fiduciary duty to act in good faith in the interests of the fund in deciding whether or not to agree to the terms of a side letter. It will be a question of judgment in any given case whether the directors or an investment manager has properly exercised its powers to enter into any given term of a side letter.

Onshore regulators such as the Ontario Securities Commission in Canada, the Financial Conduct Authority in the UK and the Securities and Exchange Commission in the US have focused on the use of side letters recently and recognised that side letters can give rise to difficult issues. Industry associations such as the Alternative Investment Management Association have also produced guidelines as to the use of side letters and appropriate disclosure of their terms in offering documents.

Onshore Tax and Regulatory Considerations

There are a number of onshore tax and regulatory initiatives beyond the scope of this chapter (such as the reporting requirements and withholding tax penalties in relation to certain US source income under FATCA, and the requirements of the EU Directive on Alternative Investment Fund Managers (the AIFMD) in relation to marketing in the EU) which may affect the operations of an offshore hedge fund outside of the jurisdiction, so it will be important for the fund, its manager and promoter to take legal, tax and regulatory advice in all other relevant jurisdictions.

Comparing Jurisdictions

This chapter has focused on the Cayman Islands, as the leading offshore jurisdiction for the formation of hedge funds. By way of comparison, set out in the table below are some statistics (current as at 31 December 2013) showing the number of registered funds in the Cayman Islands versus other main offshore jurisdictions best known as hedge fund formation domiciles, together with figures for Ireland and Luxembourg for informational purposes.

Jurisdiction	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Cayman	3,014	3,648	4,285	4,808	5,932	7,106	8,134	9,413	9,870	9,523	9,438	9,258	10,841^	11,379^
BVI	1,821	1,975	1,977	1,934	2,138	2,372	2,571	2,731	2,571	2,937	2,706	2,590	2,318	2,238
Ireland	2,392	2,870	3,300	3,507	3,712	3,798	4,087	4,780	5,025	4,627	4,743	5,069	5,305	5,599
Luxembourg	1,785	1,908	1,941	1,870	1,968	2,060	2,238	2,868	3,371	3,463	3,667	3,845	3,841	3,902
Malta	306	332	369	362	129	151	203	299	401	395	410	556	587	626*
Jersey	321	327	449	602	833	965	1,157	1,311	1,472	1,294	1,324	1,392	1,388	1,344
Bermuda	951	890	912	1022	1149	1182	1302	1303	1133	955	900	872	762	709**
Bahamas	757	673	706	707	838	709	723	782	803	788	753	713	652	652***

^ Includes master funds (2012 – excluding master funds = 8,950), (2013 – excluding master funds = 8744)
* estimated – statistic not available
** updated to Q3 2013
*** updated to Q4 2012

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Endnotes:

[1] In re Matador Investments Ltd (Grand Court of the Cayman Islands, Quin J, 27 August 2009), and Culross Global SPC Limited v Strategic Turnaround Master Partnership Limited [2010] UKPC 33.

[2] Re Wyser-Pratte Eurovalue Fund, Ltd. (unreported) 26 October 2010, and Re Heriot African Trade Finance Fund Limited (unreported) 4 January 2011.

[3] Re Medley Opportunity Fund Ltd (Grand Court, 21 June 2012), Landsdowne Limited and others v Matador Investment Limited (in official liquidation), and Swiss-Asia Genghis Hedge Fund v Maoming Fund (Grand Court, 24 July 2013).