# Running a Fund and Other Considerations

01

# U.S and Cayman Tax Considerations for Cayman Investment Fund Structures

On the initial formation of funds, you may need to consider an array of U.S. tax considerations when starting operations, relevant tax elections, withholding forms, structuring decisions, and investor reporting needs.

Cayman investments funds will be subject to FATCA and CRS and have annual reporting to the Cayman Tax Information Authority.

## U.S. TAX - ENTITY CLASSIFICATION

Entities that are organized in the Cayman Islands are eligible to make an election with the Internal Revenue Service ("***IRS***") to select how the entity will be regarded under U.S. tax law. This is called a check-the-box election and is completed by timely filing a Form 8832, *Entity Classification Election*, with the IRS.

In a typical Cayman Master-Feeder structure, the Master Fund will make a check-the-box election to be treated as a partnership for U.S. tax purposes. This election is critical to the Master-Feeder structure for U.S. taxable investors investing directly into the Master Fund, or indirectly via the U.S. Feeder Fund.

Check the box elections should also be considered for investors in complex investment fund structures, such as private equity and venture capital funds. It is important to engage with tax advisors in a timely manner to discuss the investment to allow for a consideration of options regarding the entity classifications and necessary elections.

Any entity making a check-the-box election will need to obtain a U.S. tax identification number referred to as an EIN. This is completed by filing Form SS-4 with the IRS.

Tax advisors may assist in making these elections on behalf of the fund.

## U.S. TAX – PARTNERSHIP RETURN

Funds that are treated as partnerships for U.S. tax purposes, are likely to be required to file Form 1065, *U.S. Return of Partnership Income*, with the IRS on an annual basis if the partnership is either organized in the United States or derives income from U.S. sources.

Form 1065 is due the 15th day of the third month following the partnership's year end. Where a calendar year has been selected for the partnerships, the due date is March 15. It is general practice for partnerships that have a filing requirement to request a six-month extension with the IRS.

Partners will receive a Schedule K-1 and K-3 to report the partner's share of the partnership's income, deductions, credits, etc. These schedules are attached to Form 1065 when filed with the IRS.

Schedule K-1s and K-3s are often issued to partners in advance of the Form 1065 being filed with the IRS due to partners' requirements to pay tax by a certain date. While there is no due date for Schedule K-1s individually, the partnership will issue either final or estimate Schedule K-1s to the partners of the partnership by early April following the year-end. Estimates may also be requested before year-end by certain investors.

Generally, most investment fund partnerships are subject to the centralized partnership audit rules under the Bipartisan Budget Act of 2015 ("***BBA***"). Partnerships under the BBA must follow certain filing requirements including designating a partnership representative or, if eligible, elect out of the regime on a timely filed return. The partnership representative must have "substantial presence" in the United States. This can pose an issue for partnerships if the investment manager is not based in the United States. Third party service providers can be appointed by the partnership to act as the partnership representative.

## PASSIVE FOREIGN INVESTMENT COMPANY "PFIC" REPORTING

Funds not organized in the U.S. and classified as corporate entities for U.S. tax purposes may need to provide PFIC annual information statements to their investors.

In a typical Cayman Master-Feeder structure, the Cayman Feeder will be considered a PFIC.

PFIC statements are not filed with any tax authority. However, the information provided by the PFIC is used by an investor to make a qualifying electing fund ("***QEF***") election and include reported income on the investor's U.S. tax return.

Funds should monitor underlying investments that may be considered PFICs to ensure elections are made timely or information is provided to the fund's investors to make such elections. Absent of a QEF or mark to market election, gains or distributions from PFICs are subject to the excess distribution rules of Sec. 1291. In this situation, the income earned from a PFIC will be taxed at the ordinary income tax rate and may be subject to interest and penalties.

## U.S. TAX - TRADER/INVESTOR CONSIDERATION

Federal tax law provides investors with different rules governing deductibility of management fees and other hedge fund expenses, depending upon whether the fund is deemed to be a "trader" or "investor". Trader funds consider management and other hedge fund expenses to be incurred in carrying on their trade or business and pass the full deduction against hedge fund income along to their investors.

Investor funds separately state the management fee and other hedge fund expenses as "expenses incurred for the production or collection of income," which are no longer deductible to non-corporate U.S. taxpayers of the fund.

Trader has not been defined, either in the Internal Revenue Code or in the Regulations; however, the courts have provided some guidance. On audit, the IRS has provided three important factors: (i) the frequency, extent, and regularity of the securities transactions; (ii) the manager's investment intent; and (iii) the nature of income derived from the activity.

Hedge funds that are classified as traders are permitted to make an IRC Sec. 475(f) mark to market election with the IRS. This election could be desirable for certain hedge funds. Fund managers should consult with their tax advisor on the impact of this election.

## U.S. TAX – OTHER MATTERS (UBTI, ECI, FOREIGN REPORTING)

There are many other U.S. tax issues that require consideration for investment funds. Depending on the investment strategy and type of investors, tax structuring may be complex.

Unrelated Business Taxable Income (“***UBTI***”): Most U.S. tax exempt investors are subject to tax on U.S. effectively income (“***ECI***”) and debt-financed investments. Foreign investors are also sensitive to any ECI exposure the fund may have directly or indirectly through investments held. If an investment fund generates or receives indirectly ECI, certain tax structuring should be considered to limit U.S. tax expense exposure and tax reporting to the IRS for the individual investors.

There has been increased scrutiny by IRS to the investment activities of offshore funds that may give rise to the offshore fund being engaged in a U.S. trade or business (“***USTB***”). Protective filings (Form 1120-F, Form 8804) may be prudent when considering when the fund has taken the position that there is no USTB activity, however there may be uncertainty around the position taken.

Additionally, U.S. persons or entities that meet certain ownership levels, directly or constructively, in Cayman entities may result in the Cayman entity to be considered a controlled foreign partnership (“***CFP***”) or a controlled foreign corporation (“***CFC***”). The U.S. investor will likely require necessary tax information of the CFC and CFP to meet the investor’s U.S. tax filing obligations.

## FOREIGN ACCOUNT TAX COMPLIANCE ACT “FATCA” AND COMMON REPORTING STANDARD “CRS”

Cayman Islands has a tax regulatory framework that prioritizes tax transparency and meets global standards. The regulations in place have increased the complexity of reporting requirements for investment funds and other Cayman Islands organized entities.

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Investment funds are classified as financial institutions (“***FI***s”) and will be required to register with the IRS and obtain a global intermediary identification number (“***GIIN***”) and register with the Cayman Tax Information Authority (“***Cayman TIA***”). Cayman FIs will report on an annual basis to the Cayman TIA and provide information on account holders that is exchanged with the United States and CRS reportable jurisdictions.

Cayman funds and related entities will complete U.S. tax withholding forms (Form W-8IMY, W-8BEN-E and W-9) and self-certification forms to open bank and brokerage accounts. Attention and care should be made to these forms as it may cause an unnecessary delay in the fund launch or result in miscalculation of tax withholding.

- Form W-8IMY: Cayman entities that are organized as limited partnerships or have made a check-the-box election to be treated as a partnership (i.e., Cayman Master Fund)
- Form W-8BEN-E: Cayman entities that are organized as non-partnerships and have not made a check-the-box election to be treated as a partnership (i.e., Cayman Feeder Fund)
- Form W-9: U.S. organized entities (i.e., U.S. Feeder Fund)

Other Cayman investment fund related entities, such as GPs, and Cayman investment management entities, may also be subject to FATCA and CRS based on the facts and circumstances of the entity.

# 02 UK Tax Considerations (the Investment Manager Exemption)

By way of background, an offshore hedge fund will not be subject to UK corporation tax so long as it is not resident for tax purposes in the UK[10] and does not carry on a trade in the UK through a permanent establishment (a "***UKPE***"). Whether the business of the fund amounts to trading is a factual question and will depend on the nature of the activities.

A fund would have a UKPE if: (a) the fund has a fixed place of business through which the business of the fund is wholly or partly carried on; or (b) an agent acting on behalf of the fund has and habitually exercises in the UK an authority to do business on behalf of the fund.

A hedge fund's strategy usually involves "trading" and the fund will not want its UK investment manager to amount to a UKPE. In order to prevent this, the arrangements between the manager and the fund will need to fall within the investment manager exemption ("***IME***").

Certain conditions need to be met in order to qualify for the IME. All of these conditions must be met in relation to the relevant transactions and failure to meet any one of them (other than the 20% test described in Condition D) would result in the exemption not applying and the transactions being potentially exposed to UK tax.

It should be reasonably straightforward to satisfy the following two conditions:

**Condition A** - the UK investment manager must be in the business of providing investment management services;

For these purposes, "investment management" includes investment advice but otherwise bears its normal commercial meaning.

**Condition B** - the transactions carried out by the investment manager must be carried out in the ordinary course of that business.

The other three conditions need some further exploration:

**Condition C** - the investment manager must act in relation to the transactions in an independent capacity.

This is defined as meaning that the relationship between the investment manager and the fund, is one that, having regard to its "legal, financial and commercial characteristics", represents a "relationship between persons carrying on independent business that deal with each other at arm's length." In assessing this, HMRC will have regard to the overall circumstances of the relationship between the investment manager and the company.

HMRC have, however, set out certain specific instances where the "independent capacity" test will be treated as satisfied in relation to a non-¬resident company regardless of any other circumstances:

(A) One of those instances is where the fund is a "widely held collective fund". This would not require the fund to be listed (or regularly traded) but instead requires that no majority interest is held by five or fewer persons and persons "connected" with them or that no interest of more than 20% in the fund is held by a single person and persons "connected" with that person (the fund being allowed, where necessary 18 months from the commencement of trading in the UK to meet this "widely held" definition);

(B) Another of these is that if the fund is not a "widely held collective fund" it is either being actively marketed with the intention that it become one, or is being wound up or dissolved.

**Condition D** - the requirements of the 20% test must be met.

This requires that the beneficial holding of the manager, and all persons "connected" (for UK tax purposes) with the manager, in the fund, must at no time be sufficient for the manager, and all such "connected persons", to be entitled to more than 20% of the total profits of the fund in an accounting period or a period of up to five years (the "qualifying period"). The percentage entitlement to profits of the manager, and "connected persons", is looked at over the qualifying period so that, effectively, the entitlement for each separate accounting period is averaged.

If the average over the period exceeds 20% then the test can still be met if the manager intended to meet this condition but failed to do so (wholly or partly) for reasons outside its control, having taken reasonable steps to fulfil that intention.

It should also be noted that any performance-related fees paid to the manager will be ignored for the purposes of determining whether this test is met provided these are fees of a nature and amount that an independent manager would receive.

Where only this condition is not met, only the part of the income to which the manager, and "connected persons", are entitled will not benefit from the IME and so would be potentially subject to UK corporation tax.

**Condition E** - the investment manager receives remuneration for provision of the services at not less than the rate that is customary for such business; and the manager must charge the fund a fee that, under general transfer pricing principles, represents an arm's length rate for the services that the manager supplies to the fund: and that fee must be recognised by the manager as taxable income in its hands at the time when the fee is earned. In a hedge fund context, the starting point for determining customary remuneration is probably still a 1-2% management fee and a performance fee of 15-20%.

As well as fulfilling the five conditions set out above, the IME will only apply to exempt from UK tax "investment transactions" carried out by a UK manager on behalf of the fund. The meaning of that term is specified in Regulations[11].

It should be noted that derivative contracts that provide for physical, rather than cash, settlement fall outside the definition of "investment transactions".

Transactions in "designated cryptoassets" now fall within the definition of "investment transactions"[12].

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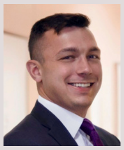

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[10]Maintaining the offshore residency of an offshore fund is a well-trodden path, which has been made less of an issue, at least from a corporation tax perspective, for AIFs

[11]Investment Manager (Investment Transaction) Regulations 2014

[12]Investment Manager (Investment Transactions) (Cryptoassets) Regulations 2022

# 03 Cybersecurity and IT Infrastructure

The bedrock of any successful hedge fund lies in its dependable technological framework. Adapted to each fund's individual strategies and structures, this foundation particularly matters for new managers, who must address underlying elements such as infrastructure, cybersecurity, and disaster recovery.

Today's emerging hedge fund managers require corporate-grade technology, yet they must balance expertise and budgetary demands to implement it. To bridge potential gaps, smaller operations are more likely than ever to outsource their IT and cybersecurity.

The right Managed Service Provider ("***MSP***") will have institutional-grade tools and delivery, and its operations will have the built-in capacity to grow alongside clients. However, it's essential to carefully evaluate potential MSPs before committing, as switching providers can prove challenging if a subpar service is received. Firms must ensure their MSP not only has the right tools and scalability, but also closely aligns with their unique requirements and long-term plans.

## FACTORS TO CONSIDER IN SELECTING AN IT MANAGED SERVICE PROVIDER

Outsourcing technology delivery disperses risk across teams, enhancing operational robustness. But when evaluating MSPs, certain factors must come into play. You should consider what services are offered, how data is used to scale delivery, and how your technology needs will impact the service level agreement ("***SLA***"). It's equally important to clarify how key performance indicators ("***KPI***s") are measured and met.

Despite being small in headcount, businesses within alternative asset management require top-tier technology, especially as investor and regulatory scrutiny intensifies. Similarly, boutique MSPs face the challenge of maintaining quality while expanding. While IT service providers traditionally focused on setup and maintenance, security is now integral. Do they possess the requisite expertise and resources, including services like managed detection and response ("***MDR***")? It's crucial to assess if their leadership can uphold far-reaching expectations during growth.

The best MSPs will boast a pool of skilled talent and impressive talent retention rates. Just remember, however, that MSPs can only be so versatile, and some have limitations in terms of adaptability. When you have extremely specific requirements, you'll need to work with a specialised team who can handle the workload and support the breadth and depth of your objectives.

## FCA IT CONTROLS

One critical aspect that hedge fund managers must address is compliance with the Financial Conduct Authority's IT controls, particularly for funds heavily reliant on technology or with AUMs exceeding $1 billion. These controls are the regulatory framework for access

control and business continuity, ensuring that confidential data is protected, and businesses have airtight protocols in the event of a disruption (either man-made or natural).

FCA IT controls encompass elements ranging from IT governance, strategy and culture, risk management, service mapping and design, service continuity, change management, incident management, third-party management, identity and access management, threat and vulnerability management, and physical environment. While an IT service provider can help managers meet many of these requirements, internal sponsorship and governance remain indispensable. Typically overseen by a tech-savvy COO, these responsibilities can vary among organisations.

To stay ahead of regulatory changes, hedge fund managers should study the more progressive and prescriptive SEC regulations, irrespective of their own regulatory status. The right MSP will embrace both the SEC and FCA frameworks. Adhering to SEC standards serves as a proactive defense against emerging regulatory challenges, so UK firms aligning with SEC benchmarks are best positioned to seamlessly adapt to emerging demands in areas like risk management, service mapping, incident response, and threat and vulnerability management.

## REMOTE MANAGEMENT

Even the most steadfast in-office hedge fund companies need to at least be remote-ready, a lesson taught by the COVID-19 pandemic. But ironically, as many start to resume on-site work, emerging managers are displaying a fresh enthusiasm for having all founders physically present in one shared space. This collective approach aims to enhance collaboration and streamline decision-making.

Whether you have an in-person mandate (in a leased or serviced office), hybrid, or purely remote team, the technology will have to adapt to your work approach. Essential components like network provisions, endpoint delivery, and authentication methods play a pivotal role in your business applications and will potentially require hosting solutions.

If you want a dedicated in-house officer to manage, we recommend keeping an MSP in the loop as to who's selected and what the process will be. You will also benefit from a primary and secondary line to ensure your circuits stay connected to the digital world. If you're evaluating the IT service provider selection, ensure you understand how different people will interact and what exactly their responsibilities would be.

Furthermore, while critical line-of-business applications may fall outside of the corporate IT scope, identifying selected or potential products remains crucial. This involves authentication methods, network arrangements, endpoint delivery, and potentially, hosting the product itself.

## CYBERSECURITY AND CONTROLS

Cybersecurity and controls are critical areas for hedge fund managers to focus on to protect their operations. With attackers becoming more agile and sophisticated, the threat of breaching vulnerable systems and compromising sensitive data poses significant risks to profits, reputation, and client relationships. Regulators are also taking a strong interest in understanding and assessing regulated firms' resilience to cyber-attacks. A comprehensive cybersecurity strategy must therefore encompass people, processes, and technology.

## PEOPLE

Hedge funds need to know there is enough talent to handle both standard and emergency requests. There should be clear primary and secondary roles as for who's in charge and access to 24/7 support. The latter may come in the form of an outsourced team but can refer to in-house or co-managed services as well. Employees at all levels must be well-trained in cyber awareness and regular social engineering tests and tabletop exercises should be conducted to ensure employees know how to respond in the event of a threat. These simulations are crucial, as they provide a safe environment to test and improve crisis response strategies, enhancing co-ordination, decision-making, and overall cyber preparedness.

## PROCESS

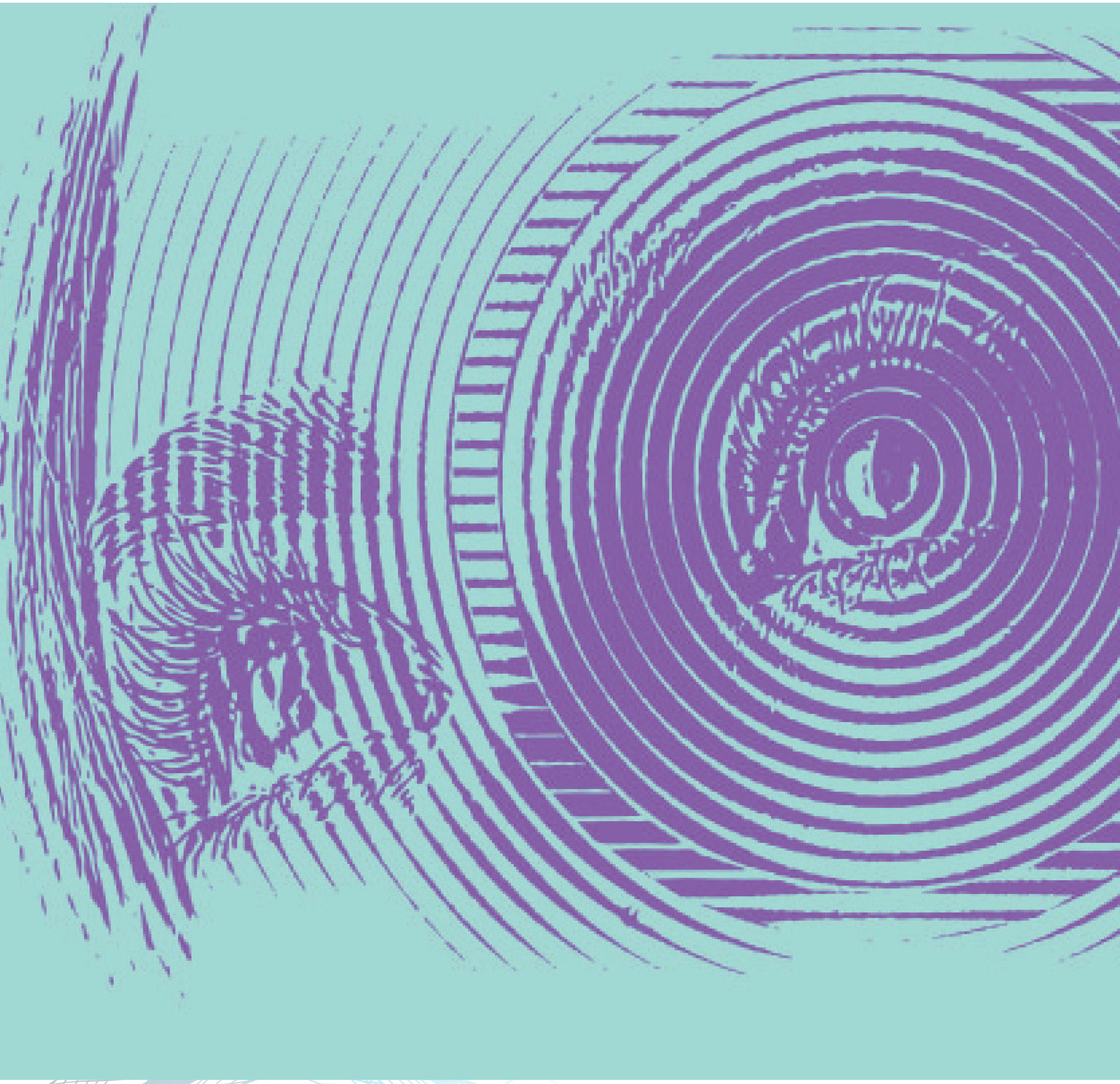
Your processes need to account for the following:

- **Change Management:** Ensure that all changes to IT systems can be completed quickly, with minimal disruption to operations.
- **IT & Cybersecurity Policies:** This roadmap (e.g., WISP, etc.) will outline policies, controls, and processes.
- **Business Continuity Planning:** Taking disaster recovery a step further, business continuity planning can eliminate virtually any downtime after a disaster.
- **New Starter/Leaver Process:** Hedge fund employees and MSPs should know how access will be deactivated and how new accounts should be established.
- **Penetration Testing:** Simulated attacks help engineers gauge what would happen in the event of the real thing.
- **Principle of Least Privilege ("*PoLP*"):** Hedge fund employees should only be given enough access to information to do their jobs effectively.
- **Vendor Due Diligence:** When vendors often have access to sensitive data, multiple checks must be done on their integrity and cybersecurity measures.
- **Vulnerability Management:** Identify, manage, and remediate vulnerabilities across systems.
- **Reporting:** Data should include access, permissions, endpoints, and software for a more well-rounded analysis.

## TECHNOLOGY

Cybersecurity technology encompasses a range of essential components to safeguard digital systems and data. These components should include:

- **Backup Solutions:** Implement regular data backups to an external storage location.
- **Email Security:** Use filters and encryption to prevent phishing attacks and data leaks.
- **Endpoint Security:** Install anti-malware software on all devices.
- **Firewalling:** Set up network barriers to block unauthorised access.
- **Identify/Permission Management:** Manage user access levels and permissions to sensitive data.
- **Mobile Device Management ("*MDM*"):** Implement security policies on mobile devices to prevent unauthorised access to corporate data.
- **Multi-Factor Authentication ("*MFA*"):** Hedge funds should establish a multi-step account login process. However, MFA is not entirely foolproof – it must be coupled with complementary security measures.



- **Patch Management:** Keep software and systems up to date with the latest security patches.
- **Secure Remote Working:** Implement network segmentation and encrypted connections for safer remote access.
- **Security Information and Event Management ("*SIEM*"):** Monitor and analyse system logs for suspicious or unusual activity.
- **Vulnerability Scanning (ongoing):** Regularly scan systems for potential weaknesses.
- **Web Security:** Use filters and firewalls to block malicious websites and prevent unauthorised access.

Certain cybersecurity measures are relatively simple for a hedge fund to organise and implement. More involved procedures, such as SIEM, take more effort, but they will also reveal weaknesses that often go undetected until a disaster. Hedge funds need to define how systems can be accessed on mobile devices, how far their firewalls will go to protect assets, and what products they will use as backup solutions. If you're considering an MSP, consider how services like Managed Detection and Response will support your in-house technology.

### REGULATORY

As regulatory requirements and investor expectations increase, hedge funds should ensure they are using the right technology solutions to meet mounting data retention and reporting obligations. Employing long-term retention tools allows for sustained log storage, crucial for incident identification and investigation, thereby aiding future prevention.

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Approved communication channels are also vital. Using platforms such as WhatsApp for sensitive content can prove problematic, for example, due to inadequate monitoring and archiving. Ensuring sanctioned channels and providing guidance plays a key role in upholding effective and monitored communication practices.

Call recording and archiving additionally give staff enough information to dig into the details. Even if the hedge fund is not subjected to a specific law, these tools help staff go the extra mile without placing undue stress on their workloads. An MSP makes recommendations on which products would work best for a hedge fund and how they can be used in preparation for upcoming regulatory changes.

In the ever-changing alternative investment space, cyber resilience hinges on technology and strategy. Amidst regulations and rising investor demands, talented teams, strong processes, and innovative technology will bolster your organisation's defences, supporting long-term digital strength.

# 04 Insurance

Establishing a new investment manager and fund operation is a significant commitment, involving time, effort, patience and of course, finances.

The momentous journey of attracting investors, satisfying regulators, and appointing service providers is not easy. This demanding work requires protection of your firm, your people, and of course your investors. The financial institutions insurance sector can play a valuable role in providing this shield.

The importance of buying 'collectible' insurance protection necessitates the engagement of an expert and experienced broking partner to advise you, design the right insurance solution and to access high-grade insurers in the insurance market. Electing such a broker is key to ensuring not only high-grade protection, but also minimisation of cost and to have the right support in the unfortunate event things go awry.

The following sections give an insight into the types of insurance protection that should be considered, what classes of cover do, and for whom. It is intended to provide a simplified glossary of usual insurance terminology, and a short narrative on how you can prepare to maximise the best insurance outcome.

We also expand on some of the more technical (but important) factors to consider if you are considering utilising a third party 'ManCo'.

## TYPES OF INSURANCE NECESSARY

The most efficient and comprehensive insurance solution available to meet the needs of a manager, fund, and usual associated entities is an Investment Manager Insurance ("***IMI***") policy - in the US often referred to as a General Partner Liability ("***GPL***") policy.

These policies are modular and allow firms to elect all or certain covers across:

a) Fund Manager Directors' & Officers' Liability
b) Fund Liability, and Fund Directors' & Officers' Liability
c) Fund Manager Professional Liability / Errors or Omissions
d) Crime / Fraud
e) Entity Employment Practices Liability
f) Regulatory Response

As a minimum, managers should elect to have a) – d) and f).

For Alternative Investment Fund Managers (AIFMs) seeking to address Professional Liability requirements through insurance (rather than 'own funds'), the limit requirements are obligatory (and distinct from other regulatory capital requirements) at 0.9% of relevant assets for the annual limit and 0.7% on a per claim basis.[13]

These insurances have nuances such as limits being provided in the form of an 'annual pot' rather than a 'per annum' annually limitless sum. The 'annual pot' (termed "annual aggregate limit") is available for a single claim but are designed to provide protection in respect of claims made during the annual period. Particular attention should be given to the earliest date that negotiations with potential allocators and service providers took place, to ensure protection applies from the moment liability could attach.[14]

Insurance protection is not obligatory. Yes, there are regulatory and regime requirements and guidance that oblige managers to set aside capital as an alternative to insurance (Alternative Investment Fund Manager Directive (AIFMD), for example).

Simply adhering to codified rules, however, is not equivalent to a strategic risk-transfer approach to protecting your firm, your investors, your talent, and your reputation.

## BOTTOMS VERSUS BALANCE SHEETS – WHAT DOES WHAT

For most firms, custody, depositary, and administrator arrangements reduce the potential for criminal losses. Obligations and exposures to liability are largely established through the terms of the fund documents. As such, professional liability (civil liability) coverage is paramount.

Professional Liability coverage seeks to contemplate the professional activities and services provided to clients (funds / managed accounts etc), whereas Directors' & Officers' ("D&O") Liability coverage contemplates personal exposure to D&O[15] attracted through the discharge of duties and obligations in capacities as directors and officers. (Note that these policies address members and partners in the same manner).

Simplified, professional liability cover provides protection to the firm's balance sheet in the event of a claim made against the entity, while D&O liability cover provides protection to individuals.

## DEMYSTIFYING 'INSURANCE SPEAK'

Terminology used in the insurance world can be confusing. Examples of key terms, their 'normal' meaning, and key provisions, are as follows:

### Retroactive Date

- This is the date from which your activities will be contemplated for coverage.
- For a new launch, it would be usual for insurance to become effective from the date the firm starts to trade, however the critical activities undertaken prior to launch (such as attracting allocations, drafting fund documents, appointing service providers, hiring talent, etc) are fundamental activities that attract risk and exposure, relevant to both professional activities and actions / activities as directors and officers. As such a 'Retro Date' needs to align with the date such activities commenced.

### Limit of Liability / Indemnity

- This represents the 'pot of money' that will be available to address any claims made under the policy (usually on a per year basis).

### Aggregate Limit

- In simple terms, 'aggregate' means the pot of money that is available to meet any claim or claims over the policy period (normally a 12-month period).

### Deductible / Retention

- This is insurance speak for the 'excess' applicable to any claim - essentially the financial contribution you are required to make (or absorb) in the event of a claim before insurers will contribute to a covered claim.

### Exclusions

- These are the activities, and behaviours for which insurers will not provide coverage. The drafting of exclusions necessitates careful consideration to maximise the coverage and to minimise the impact of the exclusions.

### Circumstance(s)

- These are matters, occurrences, or events that have the potential to cause loss or damage to a third party to whom you are providing services, but have not yet developed into allegations or accusations from such third parties. The nature of these insurance products is such that timely notification of any ‘circumstances’ to insurers (in accordance with the policy requirements) is critical.[16]

### Claims Made

- The principle of ‘claims made’ is fundamental to these insurance products. Unlike many other forms of insurance, these insurance policies contemplate coverage when a claim is made, rather than when the act or activity that is ‘alleged’ to have been the cause of the loss occurred or took place.[17]

### Conditions

- These are the obligations placed on your business that need to be complied with, in order to avoid insurers being able to refuse, restrict or ‘haircut’ any coverage response following a claim.[18]

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## HOW TO BEST PRESENT YOURSELF TO INSURERS

Your insurance policy should be considered as collateralising your business. The scope for a significant claim to severely damage or destroy the financial health of your firm is real.

Transparency, collaboration, and partnership should be the basis of your engagement with your insurer. Electing an expert broker to advise and guide on the engagements with your potential insurers will maximise the value of your premium spend when it matters.

## MANAGEMENT COMPANIES – DELEGATION

The contractual eco-system within the alternatives sector is highly complex and exacerbated by regulatory regimes such as UCITS and AIFMD.

The complexities associated with outsourcing require expert understanding. The election of an expert broker is critical.

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[13] A specialist broker to the alternatives sector will be able to advise you on these provisions.

[14] A specialist broker will be able to advise you on these ‘retroactive’ provisions.

[15] The definitions of director and officer are usually very expansive.

[16] Circumstance(s) needs to be considered against the ‘claims made’ nature of the insurance policy (see paragraph g)

[17] The claims made nature of coverage is intertwined with ‘circumstance’, and ‘Retroactive Date’.

[18] A specialist broker will advise you on these conditions and, where appropriate, negotiate on language with the insurers

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BUSINESS LITIGATION

**110**
INTELLECTUAL PROPERTY

**175**
FINANCIAL TRANSACTIONS

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TEXAS

**156**
EAST COAST AND CHICAGO

**16**
COLORADO

**47**
CALIFORNIA

**11**
LATIN AMERICA

**41**
LONDON

**3**
ASIA