

**WEBINAR:**

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**FUNDAMENTALS OF FUNDS IN CAYMAN AND  
HONG KONG**

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**MARCH 2021**

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# Fund Entities



# Types of Funds in the Cayman Islands

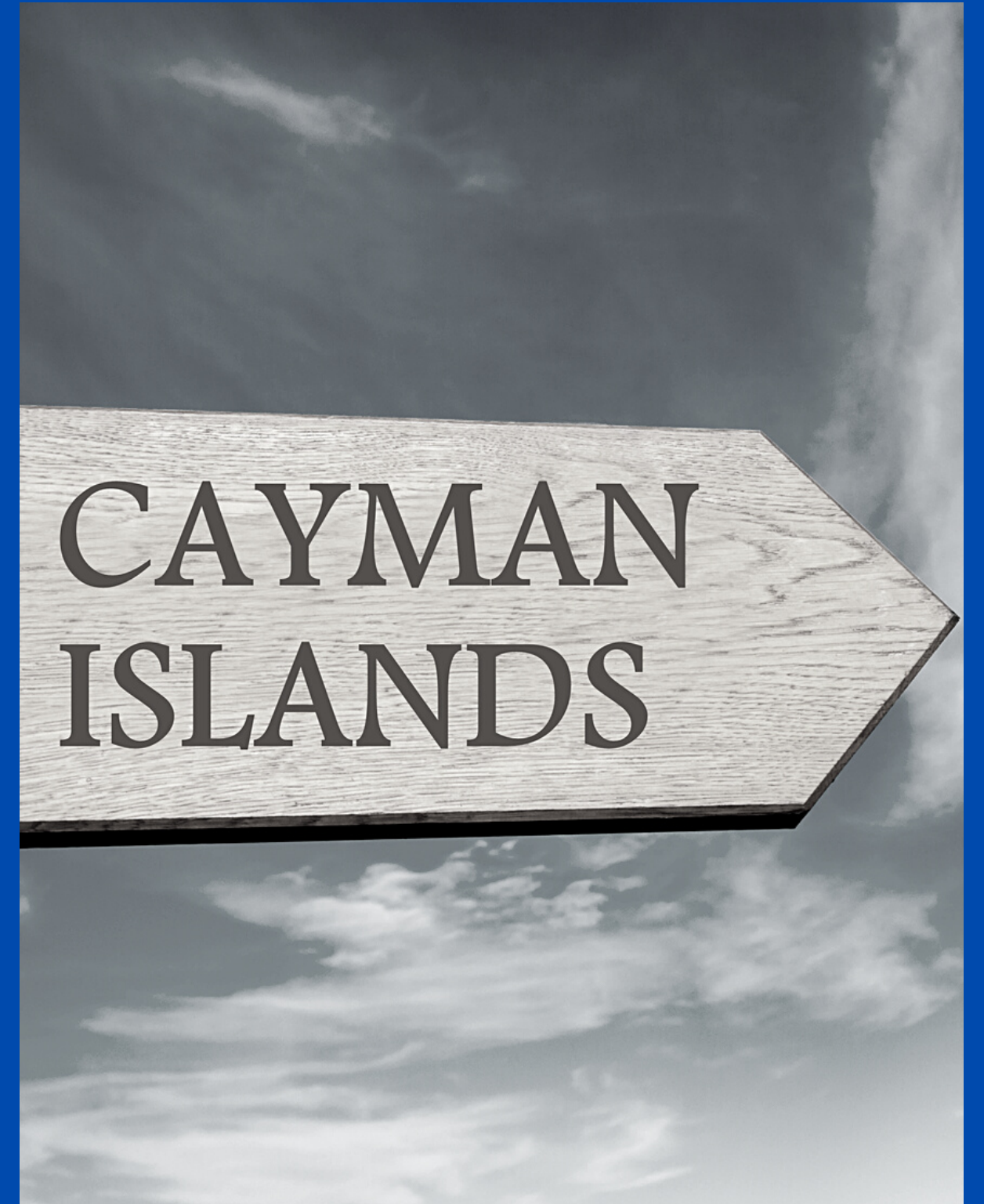
- Licensed Funds
- Administered Funds
- Registered Funds - min investment US \$100,000
- Limited Investor Funds - not more than 15 investors and a majority can appoint or remove the operator
- Private Funds (closed ended)



# Fund Structures in the Cayman Islands

## Exempted Companies / LLCs

- Limited Liability
- Same day incorporation
- No governmental approval required
- No requirement for approval by CIMA for issue or transfer of shares
- Annual meetings not required and if held do not need to be held in the Cayman Islands
- Tax undertakings may be obtained which provide an exemption from the imposition of any tax for up to 30 years





# Fund Structures in Cayman

## Segregated Portfolio Companies

- Separate portfolios within one legal entity
- The assets and liabilities of one segregated portfolio are "ring fenced" from those of every other portfolio within the company and from the general assets and liabilities of the company





# Fund Structures in Cayman

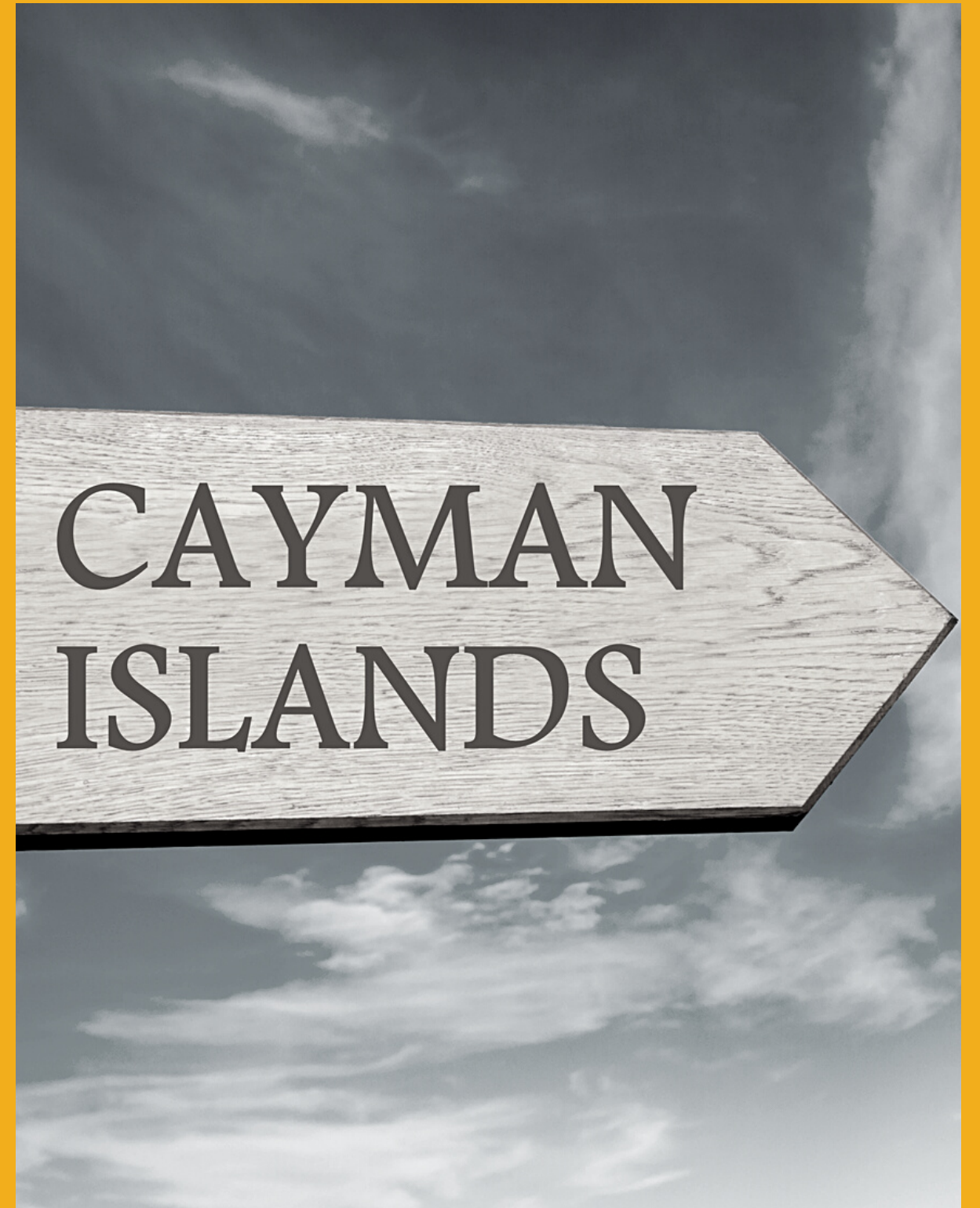
## Exempted Limited Partnerships

- Limited Liability
- Same day registration
- No governmental approval required
- Limited Partnership interests can be redeemed at any time
- Interest, dividends and gains payable to the partnership free of all taxes
- Tax undertakings for an exempted limited partnership may be obtained for a period of 50 years



# Cayman Island Unit Trusts

- Established by Trust Deed
- Each trust unit is redeemable at the option of the investor
- Provided none of the investors is resident in the Cayman Islands, can be registered as an exempted trust and obtain a 50-year tax undertaking





# Types of Funds in Hong Kong

*Fund entities to be covered today include:*

- the Open-Ended Fund Company (OFC)
  - Private and public (public being authorised by the Securities and Futures Commission)
  - Umbrella fund versus single fund
- REITs
- Limited Partnership Fund
- the Hong Kong Unit Trust



# Fund Structures in Hong Kong

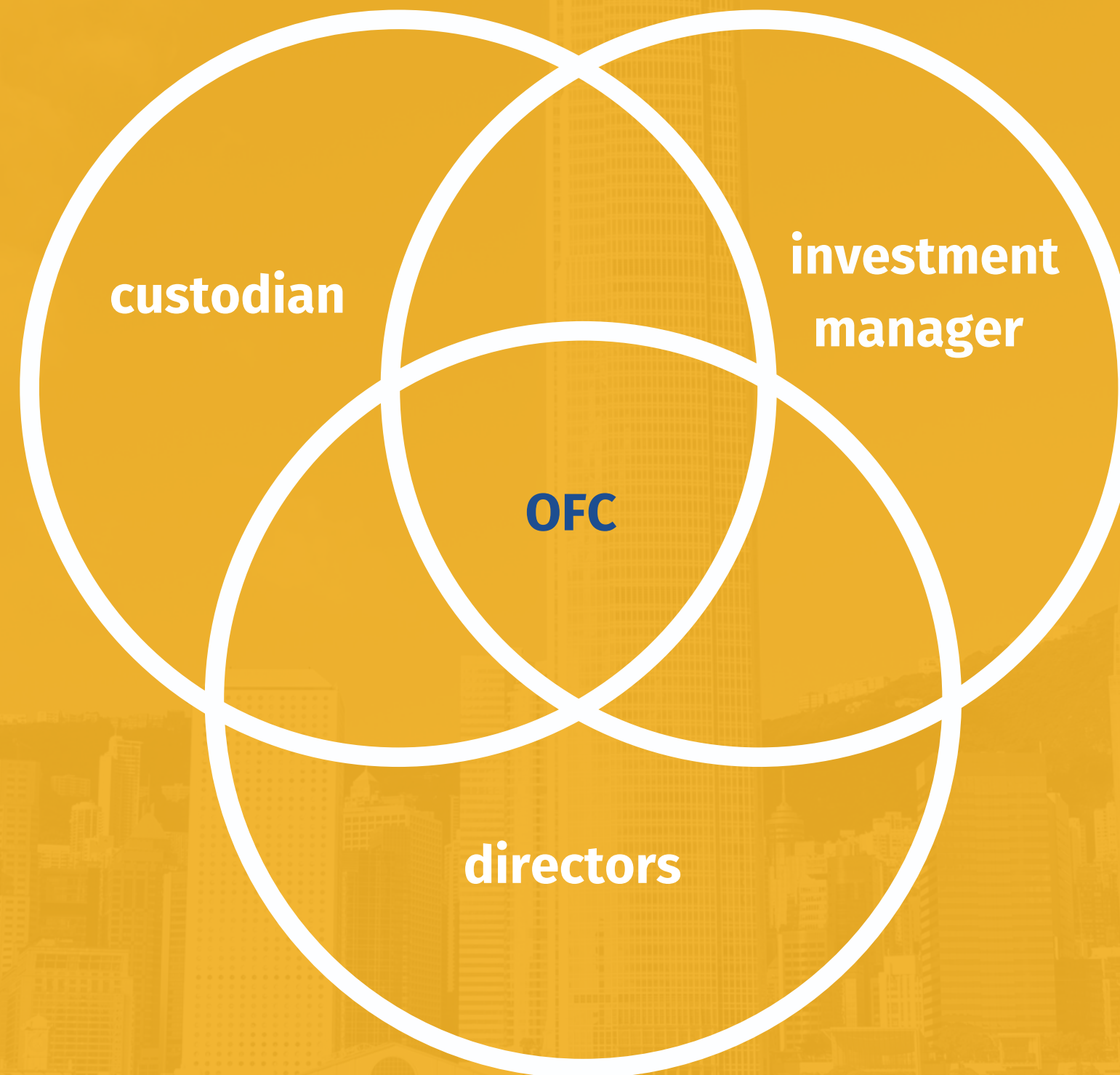
## Private Open-Ended Fund Company (OFC)

- Open-ended fund in corporate form domiciled in Hong Kong
- Key features of the private OFC include:
  - the assets of the OFC must be segregated and entrusted to a custodian for safe keeping
  - must appoint a licensed investment manager (Type 9 license - asset management)
  - the OFC can be structured as a single fund or alternatively it can have multiple sub-funds



# Open-Ended Fund Company (OFC)

## Key operators







# Private Open-Ended Fund Company (OFC)

**segregated liability**

- single fund versus umbrella fund
- multiple sub-funds each with their own investment objectives, restrictions and policies
- implied terms into the umbrella OFC's contracts to entrench the principle of segregated liability



# SFC fees for a Private OFC

Umbrella OFC  For each sub-fund	Application and registration fee: HK\$10,000 Post registration Per application for each item of charge: HK\$300.00
	Application and registration fee: HK\$1,250 Post registration Per application for each item of charge: HK\$300.00
Single OFC	Application and registration fee: HK\$5,000 Post registration Per application for each item of charge: HK\$300.00



# SFC fees for a Public OFC

Umbrella OFC  For each sub-fund	Application and registration fee: HK\$40,000 Authorisation fee: HK\$20,000 Post authorisation Annual fee: HK\$7,500
	Application and registration fee: HK\$5,000 Authorisation fee: HK\$2,500 Post authorisation Annual fee: HK\$4,500
Single OFC	Application and registration fee: HK\$20,000 Authorisation fee: HK\$10,000 Post authorisation Annual fee: HK\$6,000



# Fund Structures

## Hong Kong Limited Partnerships

- Limited Partnership Funds Ordinance came into force on 31 August 2020
- similar to offshore limited partnership fund vehicles:
  - no regulatory approval required
  - no min. capital requirements in relation to limited partners
  - no investment restrictions
  - broad safe harbours
  - freedom to contract flexibility





# Hong Kong Limited Partnerships

- the LPF must have a registered office in Hong Kong
- at least one general partner and one limited partner
- the GP must make the following appointments:
  - appoint an investment manager (who may be the general partner or another person)
  - appoint a local auditor
- there is no duty to appoint a custodian. However, the GP is under a duty to ensure the proper custody of the assets of the limited partnership fund





# Hong Kong Limited Partnerships

The contractual freedoms and safe harbours under the LPFO include:

CONTRACTUAL FREEDOMS	SAFE HARBOURS
the admission and withdrawal of partners in the fund;	serving on a board/committee of the limited partnership fund
the transfer of interests in the fund by the limited partners in the fund;	advising or approving the general partner/investment manager on the business, accounts, valuation or assets of the limited partnership fund
the organisation, management structure, governance and decision-making procedures of the fund;	taking part in a decision about the admission/withdrawal of any partner
the investment scope and strategy of the fund;	appointment of the investment manager







## Ongoing cost for the limited partnership fund

- The general partner of the limited partnership fund must file an annual return with the Companies Registry in Hong Kong within 42 days after each anniversary of the date on which the certificate of registration is issued to the fund
- The specified fee to file the annual return is HK\$105.00 (approximately US\$15.00)



# Hong Kong Unit Trusts

- collective investment scheme that is constituted by a trust deed
- two party trust deed is a common structure
- unit trusts must be authorised by the SFC
- Subject to the requirements of the UT Code







# Registration Requirements



# Registration of Cayman Islands Mutual Funds and Private Funds

- Application form and fee
- File Certificate of Incorporation and Offering Document (not required for Limited Investor Fund or Private Fund)
- Operator affidavit (not required for Limited Investor Fund)
- Administrator consent letter
- Cayman auditor consent letter



# Ongoing Obligations for Cayman Mutual Funds and Private Funds

- Annual fee of US\$4,628
- Operators require minimum of 2 directors ("four-eyes" principle)
- Notification of change of registered office or any material changes to CIMA within 21 days and file amended OM
- Annual return in prescribed form and fee of US\$366
- Annual audit by Cayman auditor filed within 6 months of financial y/e





# Ongoing Obligations for Cayman Mutual Funds and Private Funds (Contd)

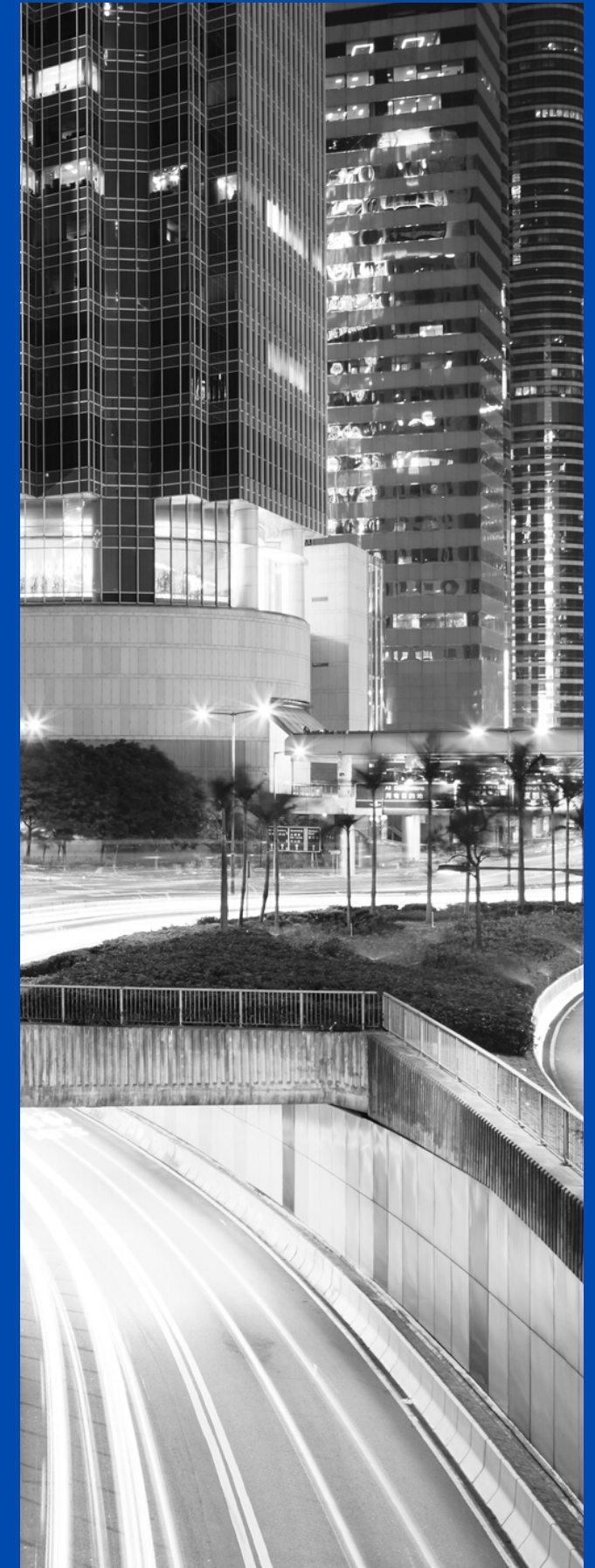
- Comply with corporate governance principles set out in CIMAS's Statement of Guidance
- Comply with FATCA and CRS exchange of information requirements, AML requirements and Data Privacy requirements
- Private funds must comply with rules re asset valuation, cash monitoring and custody and safeguarding of fund assets





# Hong Kong Fund Managers Code of Conduct

- the SFC Fund Managers Code of Conduct (**FMCC**) sets conduct requirements for fund managers in Hong Kong
- certain disclosure requirements in the FMCC are only applicable to fund managers who are **responsible for the overall management of the fund**
- fact-based review is required to understand if a fund manager is responsible for the overall management of the fund





# Hong Kong Fund Managers Code of Conduct

Under the FMCC fund managers must disclose information in relation but not limited to:

- leverage (maximum level and basis of calculation)
- securities lending, repo and reverse repo transactions policy
- liquidity risks
- frequency of valuations and basis of valuations
- side pockets
- liquidity risks





# Hong Kong REITS

- the SFC is the primary regulator of REITs in Hong Kong
- Collective investment scheme constituted by a trust
- Primarily invests in real estate
- SFC Code on Real Estate Investment Trusts sets out the characteristics that a Hong Kong REIT seeking authorisation from the SFC must have







# Tax on Funds



# Hong Kong Tax

## Two recent tax developments in relation to funds:

- The Inland Revenue (Profits Tax Exemption for Funds)(Amendment) Ordinance 2019 - provides for a comprehensive tax exemption for qualifying funds ("2019 Amendment")
- The Inland Revenue (Amendment)(Tax Concessions for Carried Interest) Bill 2021 (this Bill has not come into effect yet) - aims to amend the IRO to provide tax concessions for eligible carried interest ("2021 Bill")








# Hong Kong Tax

## The 2019 Amendment

A fund must at all times during the year of assessment meet the following conditions:

- (a) it must meet the definition of fund under the IRO;
- (b) the transactions of the fund must be transactions in an asset class set out in Schedule 16 to the IRO (**qualifying transactions**); and
- (c) the qualifying transactions must be carried out or be arranged in Hong Kong by or through a licensed or authorised financial institution under Part V of the SFO.





# Hong Kong Tax

## The 2021 Bill

- The 2021 Bill was published in the Government Gazette on 29 January 2021.
- The 2021 Bill aims to amend the IRO to provide tax concessions for eligible carried interest distributed by eligible funds in Hong Kong.
- Under the new carried interest exemption, it is proposed that eligible carried interest distributions be taxed at a 0% rate.



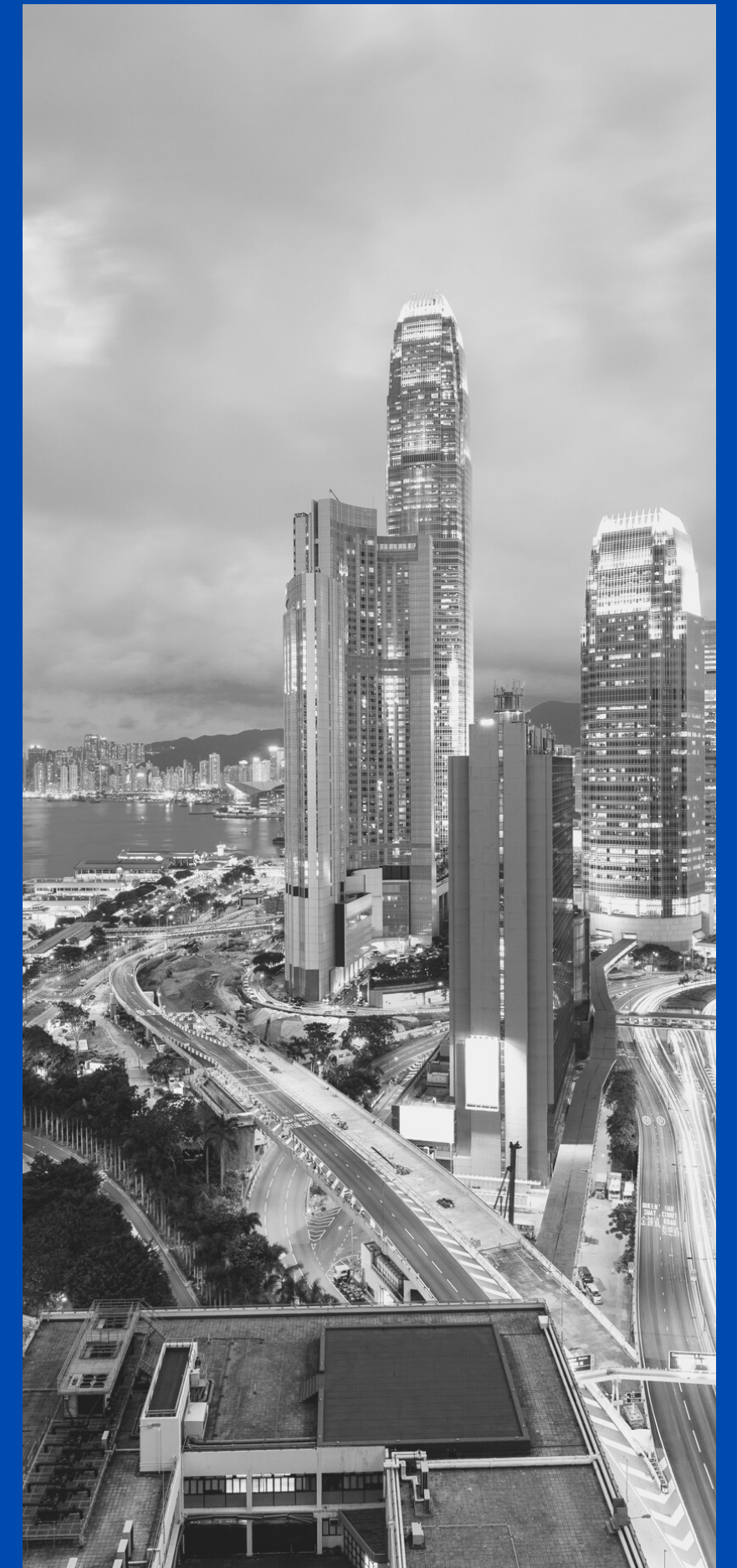


# **Marketing Funds in Hong Kong**



# Marketing Funds in Hong Kong

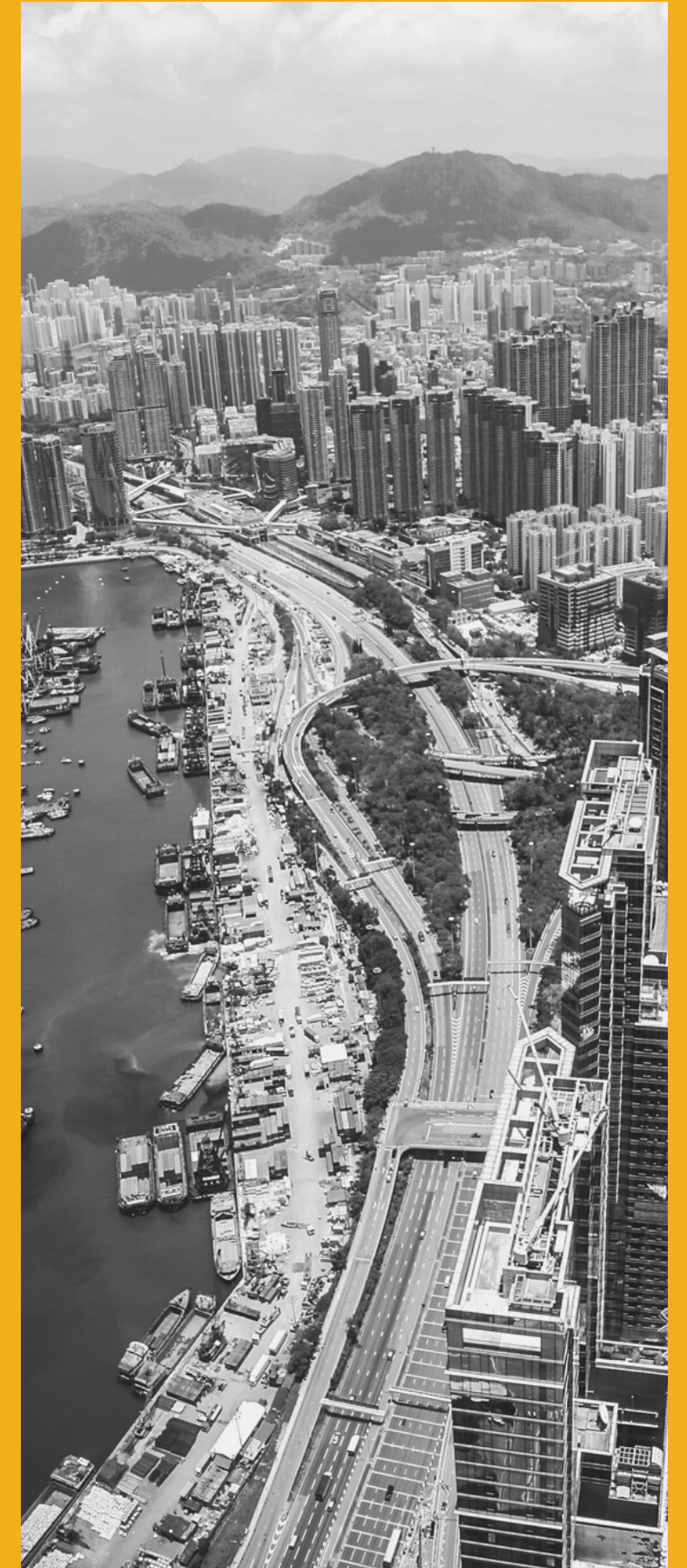
- Investment funds which are not authorised by the SFC for public offering **cannot** be marketed to Hong Kong investors, **unless an exemption applies**
- Marketing investment funds in Hong Kong falls within the scope of Type 1 (dealing in securities) regulated activity under the SFO
- Under the SFO, a person carrying on a regulated activity must be licensed by the SFC





# Exemptions

- the incidental exemption - may be relied on by an investment manager who is licensed for Type 9 regulated activity (asset management) to market funds under its management
- marketing by the fund as principal - may be relied on **only** by the fund and is very limited in its application





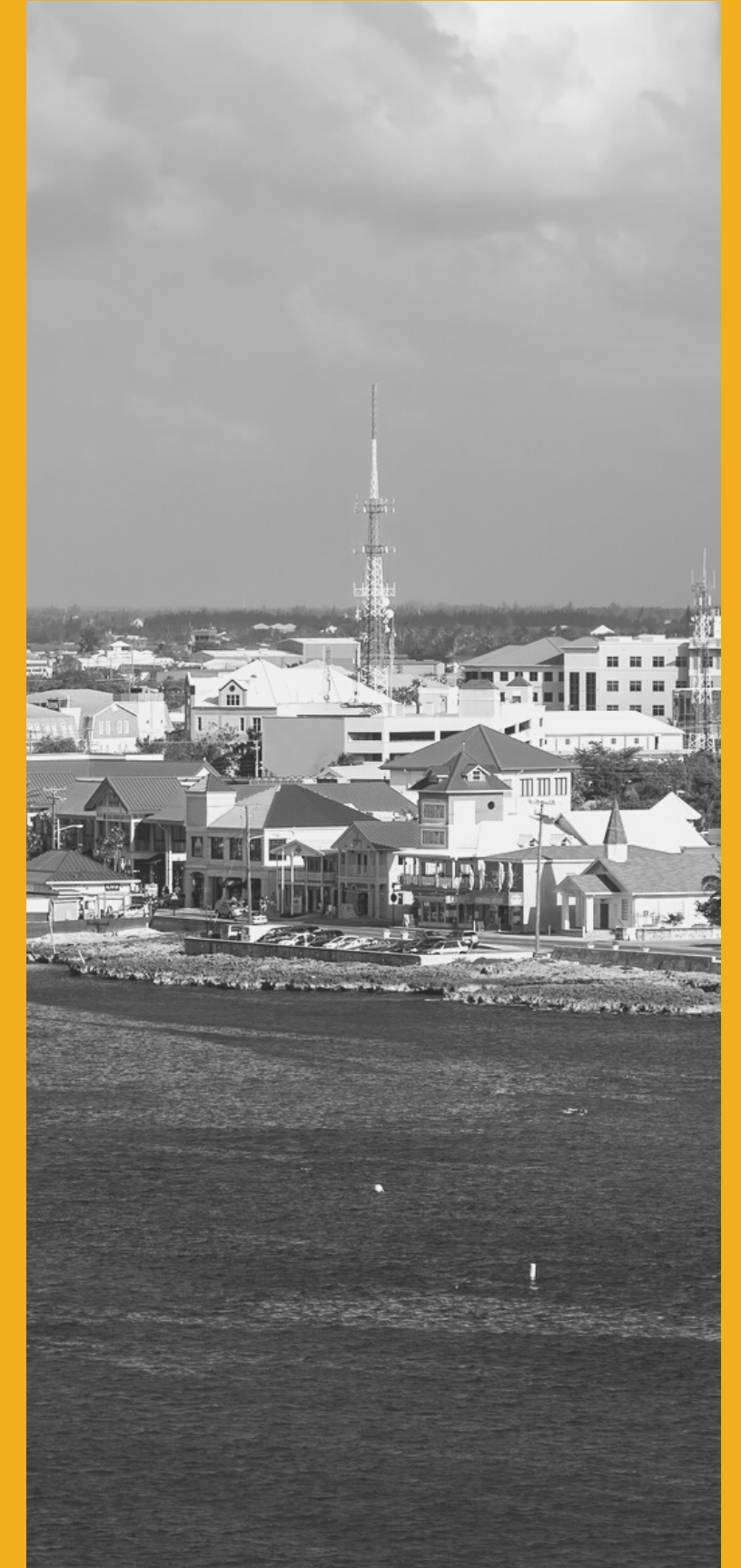


# General Market Sentiment



# General market trends in Cayman Islands

- 11,896 regulated funds in total
  - 59 are licensed funds
  - 294 are administered funds
  - 7,972 are registered funds
  - 583 are limited investor funds
  - 2,988 are master funds
- 12,695 private funds





# General market trends in Hong Kong

13 OFCs registered with the Companies Registry

- More than 100 LPFs
- As at 31 December 2019:
  - increase year-on-year of AUM of asset management and advisory business conducted by licensed corporations\*;
  - 56% of the AUM of asset management businesses were managed from Hong Kong\*

\*Source: SFC's Asset and Wealth Management Activities Survey 2019, published in August 2020

