



Industry Professionals serving as non-executive directors to Alternative Funds

## No Ducking the Issue



When the Marx Brothers' film "Duck Soup" came out in 1933, the phrase "duck soup" was American slang for something that is easy to do.

The issue of substance in offshore jurisdictions has become not only topical, but urgent. The time allowed for complying with the new regulations on the subject is short. The problem is that it is not easy to answer with precision the question of what exactly is required to satisfy the new regulations. This is no duck soup.

This newsletter aims to offer examples of what we consider substantive economic activity will look like in the Cayman Islands.

To go back a step, let's consider the dictionary definition of substance: "The real physical matter of which a person or thing consists and which has a tangible, solid presence". Tangibility and solidity can, in this instance, take advantage of technology. No one is implying the need for a three-storey building.

We understand, however, that it is unlikely that there will be specific examples or check-lists to be followed. Good sense and due consideration will provide the answers, not a tick-the-box list. It's an over-used phrase, first used by the American poet, James Whitcomb Riley in the 19th century, but nonetheless appropriate in this case:

"When I see a bird that walks like a duck and swims like a duck and quacks like a duck, I call that bird a duck".

We think you will know what real substantive economic activity is when you see it!

In our opinion, a firm that bases any of the following functional investment business areas in Cayman, carried out by persons with suitable expertise, qualifications and hands-on industry experience, ought to meet and exceed the required economic substance tests:

1. research analysis that is central to the investment decision-making process of the investment organisation;
2. portfolio management and/or trading, whether discretionary or oversight of automated execution/investment algorithm;
3. oversight of the trading function: monitoring for compliance with the mandate, best execution, market impact and evaluation of the trading function to ensure returns are optimised for the investment organisation;

4. oversight of the portfolio management function: monitoring, assessing and evaluating risks of the portfolio or the business and ensuring those are within parameters set out in offering documents and DDQ documents;
5. management of cash, encumbered assets or other collateral to optimise the returns and manage the risk exposure of the client;
6. FX, interest rate or other hedging functions aimed to control risk;
7. portfolio evaluation, benchmark or peer return analysis or a statistical analysis of returns for the benefit of traders, portfolio managers and investors.

If none of the above appeals, then the option is to duck the issue and close down your Cayman management company. When Groucho was asked for an explanation of the film's title, he quipped, "Take two turkeys, one goose, four cabbages, but no duck, and mix them together. After one taste, you'll duck soup for the rest of your life."

Caroline and Stella  
Directors, IPAF Group  
[www.ipafgroup.com](http://www.ipafgroup.com)

#### **About IPAF**

IPAF provides Industry Professionals – independent, knowledgeable and experienced people - as non-executive directors to Alternative Funds. IPAF is run from London with a panel of 17 directors across 7 jurisdictions: Cayman, Luxembourg, Ireland, Switzerland, the Channel Islands, Malta, and the UK. All the IPAF directors are independent of each other and no additional fee is charged by IPAF to a fund that selects a member of its panel: the fund only pays the director's fees. For more information please email [info@ipafgroup.com](mailto:info@ipafgroup.com).

#### **About Helix Advisory Services Ltd**

Helix is a sister company of IPAF Cayman. It provides experienced investment substance in the Cayman Islands, operating as an AIFM for funds, providing outsourcing services to Cayman managers or making its professionals available to perform that role on the board of or for Cayman management companies. Staffed by a team of highly qualified, industry-experienced professionals, it offers a unique set of solutions for alternative funds seeking innovative and substantive ways of meeting their regulatory, legal and governance obligations. Helix is registered with the Cayman Islands Monetary Authority as a SIBL Excluded Person (to become a Registered Person under the new Law in 2020).