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New registration regime for Cayman Islands private and mutual funds

MARCH 2020

What has changed?

Existing entities which fall within the definition of a Private Fund under the Law have until 7 August 2020 (the '*Transition Period*') to register with the Cayman Islands Monetary Authority ('*CIMA*') and comply with the Law.

Once the Transition Period has passed, new Private Funds will need to register within 21 days of having accepted capital commitments from investors. A Private Fund must not accept capital contributions from investors until it is registered with CIMA.

Please read the Q&A information below to further understand the changes. Please email us at regulatory@collascrill.com should you need any assistance in complying with the new requirements.

Mutual Funds

The previously existing exemption for mutual funds with fifteen or fewer investors where the majority of those investors are capable of appointing or removing the fund's operator(s) ('*Section 4(4) funds*') has been removed under the Mutual Funds Law.

These Section 4(4) funds are now required to register with CIMA, pay the prescribed annual registration fee and provide evidence that the majority of the fund's investors are capable of appointing and removing the fund's operator(s).

All new Section 4(4) funds will need to comply immediately with the Mutual Funds Law while existing Section 4(4) funds will have a transitional period until **7 August 2020** to comply and once again all managers and operators of Section 4(4) funds will be responsible for ensuring compliance.

Private Fund

The majority of closed ended funds with more than one investor come within the scope of the Law. A fund is a Private Fund according to the Law if:

- it has been structured as a Cayman Islands company, unit trust or partnership; and
- its principal business is offering and issuing investment interests, the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risk and enabling investors to receive profits or gains from the fund's acquisition, holding, management or disposal of investments where:

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- its investors do not have day to day control over the acquisition, holding, management or disposal of the fund's investments
- its investments are managed as a whole by or on behalf of its operator, directly or indirectly, for reward based on the assets, profits or gains of the fund

Non-Cayman Islands Private Funds are also captured by the Law, if they invite the public in the Cayman Islands to subscribe for investment interests.

Restricted Scope Private Funds

A second category called Restricted Scope Private Funds is provided for in the Regulations.

The Regulations define Restricted Scope Private Funds as a Private Fund:

- that is an exempted limited partnership;
- that is managed or advised by a person who is licenced or registered by CIMA or authorised or registered by a recognised overseas regulatory authority; and
- in which all of the investors are non-retail, being either high net worth or sophisticated persons.

There is limited information available as to what requirements a Restricted Scope Private Fund will need to meet, although industry speculation is that the requirements will be less onerous than that of Private Funds. We expect CIMA to issue guidance shortly.

Alternative Investment Vehicles

Entities will be considered to be Alternative Investment Vehicles where they are formed in accordance with the constitutional documents of a private fund for the purpose of making, holding and disposing of one or more investments wholly or mainly related to the business of that private fund and have as its investors, only those persons who are investors in the private fund.

Where a private fund reports consolidated or combined financial statements with any one or more Alternative Investment Vehicles, those Alternative Investment Vehicles will not need to separately comply with the obligations under the Law in relation to:

- having accounts audited annually;
- valuations;
- safekeeping of assets;
- cash monitoring; and
- identification of securities.

What is not a Private Fund?

The Law excludes several non-fund arrangements as out of scope.

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Non-fund arrangements not considered to be a Private Fund are:

- pension funds
- securitisation special purpose vehicles
- contracts of insurance
- joint ventures
- proprietary vehicles
- officer, manager or employee incentive, participation or compensation schemes, and programmes or schemes to similar effect
- holding vehicles
- individual investment management arrangements
- pure deposit-based schemes
- debt issuing vehicles
- common accounts
- franchise arrangements
- timeshare and long-term holiday product schemes
- schemes involving the issue of certificates representing investments
- clearing services
- settlement services
- funeral plan contracts
- individual pension accounts
- referred equity financing vehicles
- Funds whose investment interests are listed on a stock exchange (including over-the-counter-market) specified by CIMA
- occupational and personal pension schemes
- sovereign wealth funds
- single family offices

What Private Funds need to do to register

Compliance aspects

Prior to registration, Private Funds will need to demonstrate compliance with all ongoing fund obligations, including:

- **Valuations** – Private Funds must have appropriate and consistent procedures for the proper valuation of assets. Valuations must be carried out at least once a year by an independent third party, or if internally valued by an administrator, or operator of the fund who is independent of the management of the fund

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provided that proper identification, management and disclosure of potential conflicts of interest procedures have been followed. The Private Fund's policy on valuations must be disclosed in the fund marketing materials.

- **Safekeeping** – Private Funds must appoint a custodian to hold the custodial fund assets, whose job is to verify that the fund holds title to those assets and maintain a record of those assets. Where it is not practical or proportionate to appoint a custodian then the fund may conduct internal verification, provided that in doing so it complies comply with CIMA's policies.
- **Cash Monitoring** – Private Funds must appoint a person to undertake cash management and accounting
- **Identification of Securities** – Private Funds which regularly trade in securities or hold them on a consistent basis must maintain a record of the identification codes of the securities it trades and holds. This information must be made available to CIMA on request.
- **Requirement to notify CIMA of changes** – details of any changes to the fund which materially affect the information submitted to CIMA on the initial registration of the fund must be notified to CIMA within 21 days.
- **Accounts and Audit** - Private Funds will need to prepare annual accounts in accordance with the International Financial Reporting Standards or generally accepted accounting principles of an acceptable equivalent jurisdiction. An audited set of financial accounts must be filed with CIMA within six months of the fund's year end, with the first audit period covered being the 2020 financial year. The audit will need to be undertaken by a Cayman Islands auditor who is approved by CIMA.
- **Annual Return** – a Private Fund will need to submit a Fund Annual Return (FAR) to CIMA in respect of each financial year.
- **Anti-Money Laundering (AML)**– including having in place adequate AML policies, procedures and training, annual AML audit, as well as appointing natural persons to the role of Money Laundering Reporting Officer (MLRO), Deputy Money Laundering Reporting Officer (DMLRO) Anti-Money Laundering Compliance Officer (AMLCO).
- **FATCA/CRS** – compliance with all registration, reporting and automatic exchange of information obligations.
- **Data Protection Law** (DPL)– requirements to disclose obligations with respect to how the fund processes and controls personal information of investors and employees.

Directors

Private Funds are required to have a minimum of two natural persons appointed as directors or a corporate director which in turn has two natural person appointed as directors. In the case of a limited partnership, the general partner must have two natural persons appointed as directors. The individuals need not be Cayman Islands resident persons, however many funds choose to appoint one or more Cayman Islands directors who can assist them with governance aspects of managing their Cayman Islands funds vehicles.

Individuals who will accept appointment as director on Private Funds are not subject to registration under the Directors Registration and Licensing Law, 2014.

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Registration Process

Registration forms submitted post 1 March 2020 must be filed within CIMA's REEFS portal using the applicable REEFS form. This filing can only be submitted by the local service provider who has been appointed by the fund to have this access on its behalf (normally your registered office service provider).

Below is a summary of the registration requirements:

- Application Form (APP-101-77)
- Application Fee
- Certificate of Incorporation/Registration (as applicable)
- Constitutive Documents (Memorandum & Articles of Association/Trust Deed/Declaration of Partnership (as applicable);
- Offering Memorandum/Summary of Terms/Marketing Material (as applicable)
- Administrator's letter of consent (if available)
- Auditor's letter of consent (if available); and
- Structure Chart

Fees

- Application on initial registration during the Transition Period: US$365.85
- Application fee / Annual fee*: US$4,268.29, plus US$304.88 for each segregated portfolio (only applicable to segregated portfolio companies).
- Filing fee for any change s. 11 of the Law: US$365.85

*waived for new and existing funds which register during the Transition Period

CCCS can assist with review and implementation of fund AML, FATCA and CRS and DPL requirements, as well as make referrals to local services providers where required. Please contact regulatory@collascrill.com for assistance.

Why have the Cayman Islands introduced these measures?

As noted in a statement by Cayman Finance, which can be read in full here, the legislative changes made to both the Law and to the Mutual Funds Law are in response to an evolution in global regulations, primarily driven by the Organisation for Economic Co-operation and Development, the European Union and the Caribbean Financial Action Task Force. The Cayman Islands consistently responds to global changes like these with a thoughtful and balanced approach enabling prompt adherence to evolving key global regulatory and anti-money laundering standards and best practices.

Investment funds regulated by CIMA benefit from a globally recognised regulatory environment that is based on international standards and best practices delivered through a risk-based approach that is balanced and

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proportionate.

Given the deadline for compliance is **7 August 2020**, and the considerable volume of applications CIMA will expect to process, CCCS is advising clients to commence their consultation and registration process as early as possible. For assistance or advice on what steps your entity needs to take to be compliant, please contact us at regulatory@collascrill.com

For more information about the new regime, please read our detailed summary which is available here.

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