COLLAS CRILL

Mutual Funds Law 2020

MARCH 2020

Background

The Cayman Islands has made changes to its Mutual Funds Law which came into law on 7 February 2020. These changes, implemented by the Mutual Funds (Amendment) Law, 2020 ("**MFL**") have been adopted in response to EU and other international recommendations and further demonstrates the Cayman Islands' reputation as a co-operative jurisdiction.

What funds are affected by these changes ?

The MFL will affect open-ended funds which would previously have been exempt from CIMA registration and regulation under Section 4(4) of the Mutual Funds Law (2020 Revision) ("**Limited Investor Funds**"). Limited Investor Funds are those open-ended mutual funds whose equity interests are held by not more than fifteen investors, a majority of whom are able to appoint or remove the operator of the fund.

Master funds, feeder funds and standalone funds structured as Limited Investor Funds will be affected by the MFL.

What is the impact of these changes?

Registration

Limited Investor Funds will now be required to register with CIMA.

Applications for registration of Limited Investor Funds will need to be submitted electronically through CIMA's REEFS web portal. As the web portal for electronic submission of applications is currently under construction, Limited Investor Funds will be required to submit a separate application form to CIMA in respect of its application for registration.

In order to apply to be registered with CIMA, as part of both its application form and eventual electronic application submission, a Limited Investor Fund will need to submit a copy of its certificate of incorporation/registration (as applicable), constitutive documents confirming that a majority of investors in number are capable of appointing or removing an operator of the fund, offering documents/summary of terms/marketing materials (as applicable), auditor's letter of consent and administrator's letter of consent (if applicable) together with payment of the prescribed registration fee to CIMA.

Limited Investor Funds which register by 7 August 2020 will be liable to payment of a registration fee of US$365.85 while Limited Investor Funds which register following 7 August 2020 will be liable to payment of a registration fee of US$4,634.14.

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Limited Investor Funds will not be required to have a prescribed minimum initial investment amount.

Once CIMA receives a complete application from a Limited Investor Fund, it will consider the application and register the Limited Investor Fund once satisfied. The registration date of the Limited Investor Fund will be the date of submission of the complete application for registration to CIMA.

Audit requirements

Limited Investor Funds will also now be required to have their accounts audited annually by a CIMA-approved auditor.

The fund's accounts will need to be prepared and audited in accordance with International Financial Reporting Standards or generally accepted accounting principles of the United States of America, Japan, Switzerland or any non-high risk jurisdiction. A non-high risk jurisdiction is any jurisdictions which is not on the list of high risk jurisdictions issued by the Financial Action Task Force.

The audited accounts must then be filed with CIMA within six months of the end of each financial year, together with a prescribed form of annual return. A Limited Investor Fund will be required to submit an audit for its 2020 financial year within six (6) months of its financial year end, unless an extension is otherwise granted by CIMA. This means that if a transitioning Private Fund registers with CIMA in August 2020 and has a financial year end of 31 December, it will need to file its audited accounts with CIMA in respect of its financial year ending 31 December 2020.

Director requirements

Pursuant to the MFL, Limited Investor Funds will be required to have at least two natural persons acting as, or for, the operators of the fund. Such persons will also be required to register under the Directors Registration and Licensing Law (Revised).

Timings

The MFL provides for a six month transitional period for existing Limited Investor Funds from the commencement date of 7 February 2020 to register with CIMA and comply with the new requirements under the MFL. This means that such funds will need to register by **7 August 2020**.

Limited Investor Funds created following commencement of the MFL are expected to be registered with CIMA and comply with the MFL requirements from launch.

Accordingly, clients with existing Limited Investor Funds and those who are establishing, or thinking of establishing, new Limited Investor Funds, should speak to us as soon as possible so that we can ensure registration and compliance well before 7 August 2020.

CIMA Guidance

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We expect that CIMA will imminently publish guidance and rules which will set the parameters as to how, exactly, the Law will be implemented. CIMA currently have the following draft rules in connection with the Law out for consultation with the private sector and industry stakeholders:

1. Rule on the calculation of Asset Values;
2. Rule on Segregation of Assets: and
3. Rule on Offering Documents.

If implemented, these Rules will affect the content of each fund's offering documentation and will apply to all funds licensed or registered with CIMA under Section 4 of the Mutual Funds Law (as amended).

We will keep you informed of any updates in respect of the Law's implementation.

Winding-up of existing Limited Investor Funds

An existing Limited Investor Fund which is in liquidation / being wound-up or that has commenced the liquidation / wind-up process prior to 7 August 2020, and which submits evidence (in the form of resolutions, auditor confirmations etc.) to CIMA that its liquidation / winding-up will be completed prior to 7 August 2020 will not be required to apply for registration under the MFL.

Supervision and Enforcement

The MFL provides CIMA with additional supervisory and enforcement powers in respect of Limited Investor Funds, bringing such types of funds in line with the existing Cayman Islands regime applicable to other forms of open-ended funds under the MFL.

Contact

If you would like any additional information, please get in touch at regulatory@collascrill.com or with your usual Collas Crill contact, who will be happy to speak with you.

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