

UPDATE

Private Funds Law, 2020 and Mutual Funds (Amendment) Law, 2020

The Cayman Islands Private Funds Law, 2020 and the Mutual Funds (Amendment) Law, 2020 introduce fundamental changes to the regulation of Cayman Islands investment funds

Introduction

The Private Funds Law, 2020 and the Mutual Funds (Amendment) Law, 2020 came into force in the Cayman Islands on 7 February 2020. These laws introduce new regulation for Cayman Islands private funds and previously unregulated mutual funds respectively. Subsidiary legislation to support the new private funds regime, in the form of the Private Funds Regulations, 2020 and the Private Funds (Savings and Transitional Provisions) Regulations, 2020, came into force on the same date.

Changes for private funds

The Private Funds Law, 2020 requires closed-ended Cayman fund vehicles to apply for registration with the Cayman Islands Monetary Authority (CIMA) within 21 days of accepting capital commitments from investors. Such fund vehicles must be registered prior to accepting capital contributions from investors for the purposes of investments.

Key definitions

The Private Funds Law, 2020 applies to "**private funds**". A private fund is a vehicle whose principal business is the offering and issuance of investment interests¹, the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and enabling investors to receive profits or gains from the vehicle's investments, where (a) the investors do not have day-to-day control over those investments and (b) the investments are managed by or on behalf of the fund's operator for reward based on the vehicle's profits or gains.

The definition of "private fund" excludes certain "**non-fund arrangements**". Those non-fund arrangements include pension funds, securitisation SPVs, joint ventures, proprietary vehicles, holding vehicles, individual investment management arrangements, debt issues and debt issuing vehicles, structured finance vehicles, sovereign wealth funds and single family offices.

Registration requirements

Registration application requirements are yet to be prescribed. They are expected to involve the provision of key details of the fund's structure, assets and service providers, together with payment of an annual registration fee and copies of the formation certificate and marketing prospectus or offering document, where applicable.

A private fund will be able to market and solicit investment from certain sophisticated and high net worth investors without having registered with CIMA. However, a registration application must be made within 21

¹ **Investment interest** means a share, LLC interest, trust unit or partnership interest that:

- (a) carries an entitlement to participate in the profits or gains of the vehicle; and
- (b) is not redeemable or repurchasable at the option of the investor,

but does not include debt or certain alternative financial instruments. The definition of **investor** also excludes promoters, operators and proprietary investors.

days of accepting capital commitments from investors, and the fund must be registered with CIMA prior to accepting any capital contributions, for the purposes of investments.

Timing

All new and existing private funds will need to comply with the Private Funds Law, 2020 by 7 August 2020, or such further period as may be specified by CIMA.

Changes for mutual funds

Removal of section 4(4) exemption

The Mutual Funds Law (2020 Revision) previously provided for three categories of regulated fund, with an exemption from regulation for investment funds where:

- the equity interests in the fund are held by 15 or fewer investors; and
- a majority of those investors have the power to appoint or remove the fund's operator (**section 4(4) funds**).

Under the Mutual Funds (Amendment) Law, 2020 this exemption has been removed. Section 4(4) funds will now be required to:

- register with CIMA;
- pay an annual registration fee; and
- file documentation confirming the ability to appoint/remove the fund's operator.

Timing

Existing section 4(4) funds will need to comply with the Mutual Funds (Amendment) Law, 2020 by 7 August 2020, or such further period as may be specified by CIMA. All new section 4(4) funds will need to comply immediately.

Ongoing obligations for private funds and mutual funds

Both the Private Funds Law, 2020 and the Mutual Funds Law (2020 Revision) as amended by the Mutual Funds (Amendment) Law, 2020 include the following ongoing obligations to:

- inform CIMA of any material changes to the information submitted in the registration application or the fund's offering document or prescribed details filed with CIMA, as applicable, or of a change in the fund's registered or principal office, within 21 days of making the change;
- pay an annual fee by 15 January each year;
- file an annual return with CIMA;
- have the fund's accounts audited annually by a CIMA approved auditor, together with an obligation to file audited accounts with CIMA within 6 months of the fund's financial year end; and
- retain records in accordance with CIMA's published rules, guidance and policies.

The Private Funds Law, 2020 also imposes requirements regarding asset valuations, safekeeping of assets and title verification, cash monitoring and (where applicable) identification of securities. Asset valuations, safekeeping and cash monitoring are required to be conducted by an independent third party but may also be conducted by the fund's manager or operator, provided that the relevant function is independent from the portfolio management function or the potential conflicts of interest are identified, managed, monitored and disclosed to investors.

Next steps

The Mourant team are fully briefed on the new legislation and prepared to assist. Further guidance and rules are expected in due course and we are constantly monitoring the position. Please contact your usual Mourant contact with any questions or, alternatively, please get in touch with one of the contacts named below.

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