

UPDATE

What's Trending in Cayman Funds? Top Take Aways

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Key points from our recent webinar discussing Cayman Funds

Cayman proven to be a trusted solution in uncertain times

Cayman, the preeminent offshore jurisdiction for investment fund formation has, against a number of odds, fared well over the last several months. As of the end of March 2021, there were 11,555 registered and licensed mutual funds (a 4% increase over the last 6 months and an 8% increase over the last nine months) and 13,219 registered private funds (a 7% increase over the last 6 months).

One major headline has been the pandemic, which has impacted fundraising (both positively and negatively) and operations (as evidenced by a rise in redemption requests for some open-ended funds and capital calls for some closed-ended funds). It has also created opportunities, including for special situation funds, credit funds, GP-led secondaries and niche strategies. At a time of uncertainty when investors are loathe to take unnecessary structural risks, Cayman provides a tried and tested solution for seizing these opportunities.

Focus on compliance

Another major headline has been an increased focus on regulation and compliance. Sticking with the 'A, B, Cs of regulation':

- (a) Ensure that you have **A**ML officers appointed who you are confident know their role and are meeting their responsibilities in practice.
- (b) To avoid **A**dministrative fines, make sure that any entities within your structures are meeting their **A**ML/CFT and **B**eneficial ownership obligations. With beneficial ownership, confirm that your vehicles have provided their registered office with information confirming any applicable exemption or the requisite beneficial ownership information. Otherwise, be aware of the obligations applicable to your fund vehicles under the relevant regulatory regime(s) and avoid missing deadlines or notification requirements.
- (c) Remember the **C**RS compliance forms for both 2019 and 2020 are required to be filed with the Tax Information Authority by 15 September 2021.

New rules for both regulated mutual funds and private funds

In July 2020, the Cayman Islands Monetary Authority introduced a slate of rules for both regulated mutual funds and private funds pertaining to the contents of offering documents or marketing materials, calculation of asset values and segregation of assets. Takeaways with respect to these rules include:

- (a) most existing funds' offering documents are largely compliant with the contents rule, but the disclosures that we most commonly find ourselves adding include: disclosure regarding any material involvement by the manager in pricing the portfolio or calculating NAV and conflicts of interest as a result; if applicable,

tidy-ups to rehypothecation disclosure to conform to the segregation rule (including to specify maximum limits); and explicit disclosure, if applicable, regarding the fund's power to enter into side letters with investors containing terms that would enhance those investors' ability to redeem or make determinations as to whether to redeem;

- (b) the calculation of asset values rules require fund operators to review and approve, at least annually, the fund's NAV calculation policy and pricing models; and
- (c) the rules on calculation of asset values requires regular valuations of assets – quarterly in the case of mutual funds and annually in the case of private funds.

Funds and contractual interpretation in the redemption process

Two recent court decisions reinforce the longstanding principle under Cayman Islands law that the contractual provisions will be upheld in fund distributions, which in turn provides certainty for investors. The court will disregard market-practice that is inconsistent with the contractually agreed terms.

Appraisal actions

There has been an increase in appraisal actions under the Cayman Islands statutory merger regime where minority shareholders dissent from a merger, reject the merger price offered and seek the determination of the fair value of their shares from the court. Cayman continues to see a growth in these cases, in particular in relation to US listed Chinese companies domiciled in Cayman. It is predicted this will be a continued growth area as, due to increased US regulation over Chinese companies, hundreds of Chinese companies are looking to delist over the next 4-5 years, with approximately 60% of these companies being domiciled in Cayman. This presents opportunities to those looking to arbitrage the dissent rights under the statutory merger regime but will also attract scrutiny from the US regulators to determine whether the appraisal mechanism is providing sufficient protection to dissenting shareholders.

Private Funding

The Cayman Islands has enacted the Private Funding of Legal Services Act, 2020, which for the first time allows private funding of litigation. This is a massive liberalisation of the litigation market in Cayman. We expect to see a shift over the next few years to more speculative litigation. This is an area of development worth watching.

To view our webinar [click here](#).

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