

New Laws for Cayman Islands Private Funds and Previously Exempt Mutual Funds

February 2020

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 entirely new requirements for private funds in the Cayman Islands and remove the regulatory exemptions for mutual funds with fewer than 15 investors that previously existed. The changes ensure the jurisdiction remains in line with evolving international standards and retains its position as a premier international investment fund domicile.

Compliance with the requirements of the new laws should be a relatively simple task for funds that are in scope of them, but please note that failure to comply with the registration requirements may be punishable by a fine of CI\$100,000.

Key Points for Private Funds

The Private Funds Law captures Cayman-domiciled closed-ended funds such as private equity, venture capital, real estate and debt funds, whether they are structured as a company, unit trust or partnership. Prior to the introduction of the new law, these funds were not regulated in the Cayman Islands.

These funds will now be subject to a regulatory regime, similar to the existing regime for hedge funds, that includes the following key requirements:

- Registration with the Cayman Islands Monetary Authority (CIMA), and payment of an annual fee
- Private funds will be required to submit an application within 21 days of accepting commitments from investors and before accepting any capital contributions from them
- Filing of annual audited financial statements with CIMA, with the sign-off by a CIMA-approved local audit firm
- Provisions that require the private fund to identify, manage, monitor and disclose any conflicts of interest related to valuation, safekeeping, title verification and cash monitoring (if not properly outsourced)

Please note private funds do not have to file an Offering Memorandum with CIMA.

It is expected that CIMA will release further guidance to assist funds in complying with the new requirements, the registration process and applicable fees. At present, information on the mechanics of the registration process is not available.

Timing

A six-month transition period for the introduction of the new law commenced on 7 February 2020. Private funds already in existence, or which begin carrying on business and which have received capital contributions from investors during this period, will have until 7 August 2020 to register with CIMA.

Private funds registering during this transition period will only be required to pay the annual fee starting in January 2021. Similarly, private funds registering during the transition period will only file audited financial statements with CIMA for the first full financial year following registration.

Following the end of the transition period, private funds will need to register within the timings noted on the previous page (see second bullet point).

Key Points for Mutual Funds

Regulated mutual funds and regulated EU-connected funds, non-fund arrangements and certain overseas private funds that solicit the Cayman Islands public for investments are exempt from registration.

The Mutual Funds (Amendment) Law, 2020 removes the existing exemption from registration for section 4(4) Funds. These funds were previously exempt on the basis that the equity interests were held by not more than 15 investors, the majority of whom had the power to remove the operator of the Fund. Section 4(4) funds will now be required to:

- Pay a registration fee to CIMA and a subsequent annual fee
- File a certified copy of an extract of its constitutional documents with CIMA showing that a majority in number of its investors are capable of appointing or removing the operator of the fund
- File with CIMA any other required information in the prescribed form

In addition, section 4(4) funds will now be required to have at least two natural persons in management roles and each director or manager will need to be registered under the Directors Registration and Licensing Law, 2014. Registration is a simple

process handled through CIMA's director gateway portal involving an online filing and payment of a fee.

Section 4(4) funds will also require an annual audit sign-off by a CIMA-approved local audit firm, but will not be required to provide CIMA with a copy of its Offering Memorandum or changes to it.

Timing

Section 4(4) funds in existence prior to 7 February 2020 will need to comply with the law by 7 August 2020 (or such further period as may be specified by CIMA). All section 4(4) funds formed on or after 7 February 2020 will need to comply immediately.

How We Can Help

We will provide further information on the new Private Funds Law once CIMA issues its guidance notes. We are able to assist both private funds and section 4(4) funds with these new requirements and will be contacting existing clients to discuss their needs.

For further information, please contact your usual Trident Trust representative or email cayman@tridenttrust.com.

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