

Cayman Islands

New registration requirements for investment funds in the Cayman Islands

In line with other offshore jurisdictions and in order to comply with commitments to the EU, the Cayman Islands Government has introduced new registration requirements on both private funds and exempted funds via the Private Funds Law 2020 and the Mutual Funds (Amendment) Law (2020 Revision) which were both enacted on 7 February 2020.

This update provides a summary of the key changes and features of the new legislation.

Cayman Islands changes to 4(4) Mutual Funds Regime

Registration requirement

Mutual funds previously exempted from registration under Section 4(4) of the Mutual Funds Law (**4(4) Funds**) on the basis of having 15 or fewer investors, a majority of whom could appoint or remove the operator of the fund, now need to register with the Cayman Islands Monetary Authority (**CIMA**) and become subject to certain regulatory obligations under the Mutual Funds (Amendment) Law (the **MFL Amendment**). The registration requirement applies to all 4(4) Funds whether they are currently exempted standalone funds, feeder funds or master funds.

New requirements include the filing with CIMA of a certified copy of an extract of its constitutional documents showing that a majority in number of its investors are capable of appointing or removing the operator of the relevant 4(4) Fund.

All will be pleased to note that under the MFL Amendment, the filing of an offering document (or any amendments) with CIMA is not considered, nor shall it be required to have a prescribed minimum initial investment amount.

4(4) Funds will also be required to pay a registration fee and a subsequent annual fee to CIMA and registration will extend CIMA's regulatory enforcement powers to 4(4) Funds.

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Timing of registration

Existing 4(4) Funds - have a six month transitional period to register with CIMA and to comply with the new requirements with a deadline of 7 August 2020.

New 4(4) Funds - launched after 7 February 2020 are expected to be compliant with the MFL Amendment registration requirements upon launch.

Local audit requirement

The same annual audit and annual return requirements that currently apply to regulated mutual funds under the MF Law will also apply to 4(4) Funds, ie:

- accounts audited annually by a Cayman Islands-based auditor;
- filing of audited accounts with CIMA; and
- filing of an annual return

within six months of the end of each financial year.

Going forward

Under the MFL Amendment, 4(4) funds will be required to have at least two natural persons acting as, or for, the operator (board of directors, general partner, etc), and these persons will be required to be registered under the Directors Registration and Licensing Law (Revised).

Operators of 4(4) Funds should implement a timetable for coming into line and complying with the new legislation. Marbury will contact all 4(4) Funds clients to ensure the necessary procedures are undertaken by the deadline.

Private Funds Law, 2020

The Private Funds Law, 2020 (the **PF Law**) has been introduced to for the purposes of providing registration and regulation by CIMA of most closed-ended funds in Cayman Islands.

A private fund

The PF Law applies to all entity types in the Cayman Islands commonly used for private equity funds structures.

An entity will be a 'private fund' if:

- its principal business is the offering and issuing of its investment interests, 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 such entity's acquisition, holding, management or disposal of investments, where —
 - (a) the holders of investment interests do not have day-to-day control over the acquisition, holding, management or disposal of the investments;
 - (b) the investments are managed as a whole by or on behalf of the operator of the private fund, directly or indirectly, for reward based on the assets, profits or gains of the company, unit trust or partnership; and

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- (c) investment interests carry an entitlement to participate in the profits or gains of the entity and are not redeemable or repurchasable at the option of the investor,
- but does not include “non-fund arrangements” (as further detailed in the schedule of the PF Law).

Types of Private Funds

Under the PF Law, there are two types of private funds:

Alternative Investment Vehicle – being formed in accordance with the constitutional documents of a private fund for the purposes of making, holding and disposing of one or more investments wholly or mainly related to the business of that private fund; and only has as its members, partners or trust beneficiaries, persons that are members, partners or trust beneficiaries of the private fund

Restricted Scope Private Fund means a private fund:

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

Registration

A transitional period has been introduced (7 February 2020 to 7 August 2020) whereby private funds carrying on business at any time during the transitional period or prior to the commencement date, may continue to carry on business until 7 August 2020 without complying with the PF Law.

New Private funds that launch after 7 August 2020 will be required to comply with the PF Law from the date of launch of business by ensuring that they:

- submit the registration application to CIMA within 21 days after the acceptance of capital commitments from investors for the purposes of investments; and
- be registered by CIMA before accepting capital contributions from investors in respect of investments.

Operating Conditions

The PF Law introduces a number of operating conditions in respect of Private Funds, including, but not limited to:

- requirement to have an annual audit by a Cayman Islands-based auditor and filing of such audited financial statements with CIMA
- filing of an annual return
- ensuring that the retention of records, valuation procedures, safekeeping of the private funds’ assets and assisting with cash monitoring are properly dealt with by either a third party service provider, or in-house on the basis that these can be identified and managed and any conflicts of interest in relation to these processes are properly disclosed to the investors
- where a Private Fund trades securities, maintaining records of such identification codes

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Fees

There has been an indication that no fee will be charged upon initial registration during the transitional period, however, we are waiting on confirmation on this.

In summary

There will be many existing private funds that now need to consider compliance with the new legislation. Associated Regulations are expected to be issued imminently and we will update our clients as they become available. However, we recommend managers assess their respective structures in a timely manner to comfortably meet the registration requirements by the deadline.

Marbury will advise clients individually on next steps based on the current legislation and Regulations once published.

For further information on any aspect of this update please contact your usual Marbury adviser.

Disclaimer

This update provides an overview of the Private Funds Law 2020 and the Mutual Funds (Amendment) Law, 2020 and should not be read as legal advice. For more information please contact Marbury.