

# New registration requirements for Cayman funds

## February 2020

The Mutual Funds (Amendment) Bill (2020) and the Private Funds Bill (2020) (collectively, the “Bills”) were enacted by the Cayman Islands Government in February 2020. The new legislation requires certain previously non-registered hedge funds and private equity vehicles to register with the Cayman Islands Monetary Authority (CIMA).

These regulatory changes will have a significant impact on both Cayman Islands domiciled hedge funds and private equity funds. This article analyses the reasoning for and the key impacts of the Bills and summarises the action points to be taken for in-scope entities.

## Background

The Bills were approved by the Cayman Islands Government in February 2020. The new legislation has arisen from recommendations issued in the Caribbean Financial Action Task Force’s Mutual Evaluation Report and the EU Code of Conduct Group. The enacting of these bills demonstrates the resolve of the Cayman Islands Government and financial services industry to remain compliant with the continually evolving global regulatory landscape.

The key change in the Bills is the requirement for funds that were previously exempted from registration, to register with CIMA. Upon registration, CIMA will have the same oversight powers on the newly registered entities as for existing regulated funds.

## Entities in-scope

The types of entities that will fall within the scope of the new regulations are summarised below. We recommend that operators of Cayman domiciled funds discuss the specifics of their fund vehicle with their Cayman legal counsel to determine whether the new rules apply.

### **Hedge Funds**

Prior to enactment of the Mutual Funds (Amendment) Bill (2020), section 4(4) of the Mutual Funds Law provided exemption from registration with CIMA for open-ended funds with both of the following characteristics:

- the shares or interests are held by 15 or fewer investors; and
- a majority of those investors have the power to appoint or remove the fund's operator (i.e. the directors or general partner).

The Bill amends Section 4(4) to remove this exemption, thereby requiring previously exempted funds to register with CIMA.

### **Private Funds**

The Private Funds Bill (2020) requires closed-ended Cayman domiciled funds to apply for registration with CIMA within 21 days of accepting capital contributions from investors. Under previous laws, closed-ended funds were specifically exempted from registration.

“Private funds” are defined in the Bill as an entity *whose principal business is the offering and issuance of 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 the vehicle's investments, where: (a) the investors do not have day-to-day control over the acquisition, holding, management or disposal of the investments; and (b) the investments are managed by or on behalf of the operator of the private fund, directly or indirectly, for reward based on the profits or gains of the entity.*

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

## Timing

The Bills came into effect on 7 February 2020. Existing entities in scope have up to six months from this date to comply with the new requirements, being 7 August 2020.

# Summary of obligations after registration

The key new ongoing obligations include the following:

- Pay annual registration and filing fees to CIMA.
- Appoint an auditor to audit the annual financial statements. The audit firm appointed must be a CIMA “Approved Auditor” based in the Cayman Islands.
- File the audited financial statements and Fund Annual Return with CIMA with respect to its first full financial year following registration and annually thereafter, within 6 months of each year end.
- Comply with CIMA’s rules relating to key areas such as record keeping, asset valuations, and safekeeping of assets.

The above list is a high-level summary of the new requirements. Readers should consult the Bills and/or obtain guidance from Cayman legal counsel to ensure all requirements are met.

## How we can help

Our team of funds experts in the Grand Cayman office is available to assist with any questions relating to the new registration requirements. We are a CIMA Approved Auditor, and can assist with audit, financial statement preparation and other related services. In addition, we have strong relationships with other Cayman service providers, including law firms, fund administrators and independent directors, and we can make introductions to these parties to assist further with other aspects of the registration process.

Please contact one of our management team below to discuss further:

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