

Audit requirements for Cayman funds

March 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. One of the key impacts of registration, being the annual audit of the fund’s financial statements, is analysed in this article.

Background

The Bills came into effect on 7 February 2020, with in-scope entities needing to comply by 7 August 2020.

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.

In scope entities will need to comply with CIMA’s rules relating to submission of financial statements audited by a Cayman Approved Auditor.

Summary of current audit requirements

Under CIMA's existing rules, funds registered under the Mutual Funds Law must submit to CIMA financial statements audited by a Cayman Approved Auditor within six months of the fund's year end, along with the Fund Annual Return form.

The Fund Annual Return and audited financial statements are filed with CIMA on the "REEFS" electronic filing system, by the Cayman Approved Auditor of the fund.

In certain circumstances audits may be waived or the audit period extended, as detailed below.

Audit waivers

In certain circumstances, fund operators may apply to CIMA for a waiver of the filing requirement or for an extension of the filing deadline. Requests for waivers/exemptions or extensions must be submitted to CIMA by post or via email to ereporting@cima.ky

CIMA will assess each fund's request on a case by case basis. The most common reasons for waiver applications being considered by CIMA include:

- a fund has not yet launched (i.e. has not accepted subscriptions from investors);
- a fund has not launched and is being liquidated or wishes to be deregistered;
- a fund is unable to obtain audited accounts due to events such as bankruptcy proceedings, legal or regulatory enforcement actions; or
- a fund has been placed in compulsory liquidation and CIMA is satisfied with the appointment of the liquidator and the scope of the liquidator's review.

CIMA charges a non-refundable administrative fee for each waiver/exemption or extension request. For further information, refer to CIMA's website for a current fee schedule.

Extension of initial audit period

CIMA may approve extending the fund's first audit period for a maximum of 18 months from the date of launch. For example, for a fund with a 31 December year end:

- If the fund launches on 30 June 2020 or earlier, the fund will need to submit financial statements covering the period from launch until 31 December 2020.
- If the fund launches on 1 July 2020 or later, the fund may apply for an extension of the first audit period to cover the period from launch to 31 December 2021, if approved by CIMA.

Applications for extension of the initial period are submitted in the same way as for waivers as detailed above.

Liquidation audits

When a regulated fund is being liquidated, unless a Fund qualifies for an audit waiver, it must provide final audited accounts from the date of the last financial year end for which audited statements have been filed either to:

- the date of commencement of the winding up in cases where a third-party liquidator has been appointed; or
- the date of the final distribution if no third-party liquidator has been appointed.

In cases where a fund is ceasing operations and plans to deregister, it is recommended to discuss the process with your Cayman service providers to ensure the timing of the liquidation and final audit is optimised to minimise the cost of the closing process.

Audit requirements for funds needing to register under the new Bills¹

The Bills came into effect on 7 February 2020, with in-scope entities needing to comply by 7 August 2020. Please refer to our February update providing more detail on which entities are in scope, available on our website www.bakertilly.ky

Upon registration with CIMA under either the Private Funds Bill or the Mutual Funds (Amendment) Bill, in scope entities will need to comply with the same ongoing audit requirements as detailed above.

To clarify the timing of the first audit after registration, we have provided a few examples for different scenarios (all assuming funds with 31 December year ends):

Scenario 1:

Existing non-registered fund that now needs to register under the new laws – must register with CIMA by 7 August 2020, and audit by Cayman Approved Auditor required for the year ended 31 December 2020 (due for filing with CIMA by 30 June 2021).

Scenario 2:

New fund requiring registration under the new laws, with investors first subscriptions prior to 30 June 2020 – must register upon setup, and first audit by Cayman Approved Auditor for the period from launch to 31 December 2020 (due for filing with CIMA by 30 June 2021).

Scenario 3:

New fund requiring registration under the new laws, with investors first subscriptions after 30 June 2020 – must register upon setup, and first audit by Cayman Approved Auditor for the period from launch to 31 December 2021 (due for filing with CIMA by 30 June 2022), provided the extended initial period is approved by CIMA.

We recommend discussing the audit requirements with your Cayman service providers upon registration with CIMA, to ensure that the fund remains in compliance with CIMA's regulations.

1. *The guidance above is based on guidance issued by CIMA as at the date of publication of this article. Given this is significant new legislation, changes to CIMA's interpretation or the laws themselves may be made after this article.*

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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