

Cayman Islands Investment Funds Private Funds Bill, 2020 and Mutual Funds (Amendment) Bill, 2020

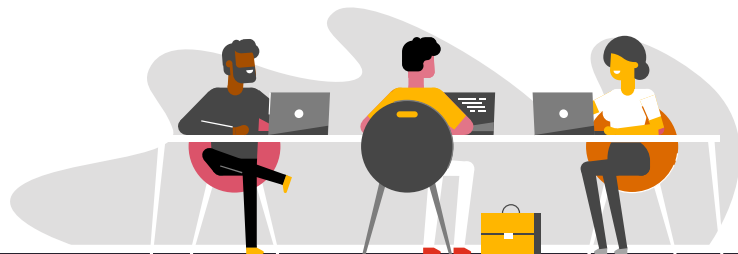
Overview

The Private Funds Bill, 2020 and the Mutual Funds (Amendment) Bill, 2020 (together the "Bills") were published in draft form by the Cayman Islands Government on January 8, 2020. The Bills seek to strengthen investor confidence in Cayman Islands investment fund vehicles and ensure that the Cayman Islands remains a preeminent jurisdiction for investment fund formation. The Bills also seek to address EU suggestions for investment fund oversight as set forth in a report dated May 27, 2019, from the EU Code of Conduct Group (Business Taxation).

Private Funds Bill, 2020

The Private Funds Bill, 2020 (the "Private Funds Bill") establishes a framework to monitor closed-ended funds ("private funds"), which are currently beyond the scope of the existing Mutual Funds Law:

- All vehicles falling within the scope of the private funds definition and section 3(1) of the Private Funds Bill must register with the Cayman Islands Monetary Authority ('CIMA') and will be subject to regulatory obligations.
- Exemptions from registration exist for certain non-fund arrangements and the Private Funds Bill also includes provisions that relieve the alternative investment vehicles of registered private funds from certain provisions.
- Upon registration (which is due within 21 days of accepting capital commitments and before receipt of capital contributions) private funds must file certain prescribed details with CIMA (notably, there is flexibility with respect to the "prescribed details" that must be filed) and pay an annual registration fee.
- Registered private funds must comply with annual audit and return requirements and retain accessible records. Annual audits must be issued or undertaken by a CIMA-approved local auditor.
- A registered private fund must also comply with certain ongoing obligations in relation to valuation of fund assets, safekeeping of fund assets, cash monitoring and identification of securities. Flexibility as to appointing service providers, including the manager, operator or administrator, to perform the valuation, safekeeping and cash monitoring functions is permitted, provided that conflicts of interest are identified, managed, monitored and disclosed.



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Mutual Funds (Amendment) Bill, 2020

The Mutual Funds (Amendment) Bill, 2020 will enhance the regulatory and supervisory framework for open ended funds:

- Funds that previously met the fifteen or fewer investor criteria set out in section 4(4)(a) of the Mutual Funds Law (the “MFL”) will now be required to register with CIMA and once so registered will be subject to regulatory obligations.
- The exemption to the registration requirement for certain overseas private funds that solicit the Cayman Islands public for investments under the MFL will remain in place.
- All regulated mutual funds must provide CIMA with information upon registration, pay an annual registration fee, comply with annual return requirements, retain accessible records and have annual audits issued or undertaken by a CIMA-approved local auditor.

Timing and Transition

The Bills are scheduled to be tabled for consideration by the Cayman Islands Legislative Assembly on January 30, 2020. The Bills are therefore subject to change as the Cayman Islands legislative process is concluded.

The timetable for implementation is still to be confirmed and it is anticipated there will be a transitional implementation period to allow for the orderly registration of new and existing in-scope funds with CIMA.

Questions?



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