



MINISTRY OF
FINANCIAL SERVICES
& HOME AFFAIRS
CAYMAN ISLANDS GOVERNMENT

INDUSTRY ADVISORY

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Funds Amendments Enacted

Industry is advised that the following laws came into effect on Tuesday, 7 July, to fulfil Cayman's commitments to the EU and to facilitate our removal from its list of non-cooperative tax jurisdictions.

Mutual Funds (Amendment) (No. 3) Law, 2020

The Mutual Funds (Amendment) Law, 2020 (the "**MF Amendment Law**") was passed in the Legislative Assembly in January this year, as a part of the package to fulfil the Cayman Islands' commitments regarding the EU's list of non-cooperative jurisdictions in tax matters.

The definition of "regulated mutual fund" was modified in the MF Amendment Law to state: "*means a mutual fund that is carrying on or attempting to carry on a business in or from the Islands and is doing so in compliance with section 4(1)(b) or 4(3) or 4(4)(a);*".

The Mutual Funds (Amendment) (No. 3) Law, 2020 amends the definition of "regulated mutual fund" to change the reference to section 4(1)(b) to a reference to section 4(1). This change simply seeks to ensure that both licensed funds and administered funds included under section 4(1) of the Mutual Funds Law are captured in the definition.

Private Funds (Amendment) Law, 2020

The Private Funds Law, 2020 (the "**PFL**") was passed in the Legislative Assembly in January this year, also to fulfil Cayman's EU commitments and in response to industry requests for further clarity from Government.

The Private Funds (Amendment) Law, 2020 (the "**PF Amendment Law**") makes the following amendments to the definition of a "private fund" under the PFL:

- **Amendment of the element of "offering and issuing" of investment interests to refer instead to vehicles that "offer or issue" investment interests.** Because a narrow interpretation of the term "offering" may result in some fund vehicles that are not engaging in a sales process that amounts to the offering of investment interests falling outside the definition of a private fund, the definition has been amended to include a vehicle that offers or issues investment interests.
- **Amendment of the issuing element to bring in scope entities that have "issued" investment interests (in the past), as well as those that "issue" investment interests.** The PFL is intended to capture all private funds, including those existing funds that have in the

past issued investment interests but no longer do so. The definition has been amended to remove any ambiguity in this regard.

- **Deletion of the "*principal business*" element.** The definition has been amended to delete the "*principal business*" aspect of the definition. Removing this element removes the need for private fund operators to take a view on what the current principal business of the vehicle e.g. is the principal business of the vehicle issuing interests or making investments or managing assets. This deletion also aligns with the addition of the past tense "*has issued*" language. The Schedule of Non-Fund Arrangements carves out arrangements not operated "*by way of business*" from the definition, so we do not consider that this amendment risks bringing non-commercial activities in scope of the PFL.
- **Deletion of the "*spreading investment risks*" element.** We understand that there has been uncertainty whether a fund falls outside the scope of the definition where it invests only in one asset, or even one type of asset, as this could be said not to constitute the "*spreading*" of investment risks. The definition has been amended to delete this element to prevent these kinds of vehicles from automatically falling outside the scope of the PFL (though some of them may, of course, then be exempted by virtue of the Schedule of Non-Fund Arrangements).
- **Deletion of the element that investments are managed "*for reward based on the assets, profits or gains of the company, unit trust or partnership*".** We understand that this language is creating uncertainty as to whether all vehicles in a multi-fund investment structure are required to register, where manager fees are generally charged only at one level. The argument made is that investments at the other level are therefore not managed "*for reward*". Indirect reward, where the payment is made at the other fund level, should in our view have been caught under the existing definition, but we believe the amendment should put the matter beyond doubt.

Officer, manager or employee incentive, participation or compensation schemes, and programmes or schemes to similar effect are out of scope. The schedule of non-fund arrangements sets out the exclusion.

Sections 16, 17 and 18 of the PFL are amended by inserting a requirement for conflicts of interest in relation to valuation, safekeeping of fund assets and cash monitoring to be managed and monitored.

The PF Amendment Law also amends section 31 of the PFL by repealing subsection (1)(d) to remove the power of Cabinet to exempt any person or class of persons or business or class of business from any provisions of the PFL.

The Cayman Islands Monetary Authority will provide further guidance on non-fund arrangements and group registrations.

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