



3 March 2020

## **NOTICE**

### **RE: PRIVATE FUNDS LAW, 2020 ("PFL") - Frequently Asked Questions**

The Cayman Islands Monetary Authority ("CIMA") outlines below, for your reference, its response to frequently asked questions relating to the registration process and ongoing requirements for Private Funds:

#### ***Registration***

1) **How do I submit a Private Fund registration application?**

A. Applications are submitted electronically through CIMA's secure Regulatory Enhanced Electronic Forms Submission (REEFS) web portal.

2) **What documents/fees are required to register as a Private Fund under the Private Funds Law?**

A. CIMA requires the following:

REEFS Application Form (APP-101-77);

Certificate of Incorporation/Registration (as applicable);

Constitutive Documents (Memorandum & Articles of Association/Trust Deed/Declaration of Partnership (as applicable);

Offering Memorandum/Summary of Terms/Marketing Material (as applicable);

Auditor's letter of consent<sup>1</sup>;

Administrator's letter of consent (if applicable);

Structure Chart;

Application Fee<sup>2</sup>

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<sup>1</sup> If the appointment of the CIMA approved local auditor has not been finalized at the time of the fund's registration, the application can proceed without the auditor's letter of consent but such consent letter must be submitted to CIMA prior to the filing of the fund's first set of audited accounts.

<sup>2</sup> There will be no annual registration fee assessed for funds registering during the transition period, which ends on 7 August 2020; however, an application fee of \$300 is due. Funds registering subsequent to the end of the transition period will pay the annual registration fee of \$3,500 and the \$300 application fee.

3) **When is a Private Fund application viewed as complete and ready for processing by CIMA?**

A. All documentation (as outlined above) and payment must be submitted to CIMA before the processing of the application will commence.

4) **Under what circumstances will CIMA reject a Private Fund's registration application?**

A. A Private Fund's registration application will be rejected where the documentation submitted is incorrect or incomplete. Please see the following [Notice](#)<sup>3</sup> for further information.

5) **Using the risk-based approach that is included in the PFL, how will CIMA ensure a timely processing of a registration application for a Private Fund?**

A. Private Funds submitting complete applications, where there are no adverse findings in respect of the information submitted, will be processed and approved within the stated timeline.

Factors that might impact registration turnaround time include:

- Adverse findings from the fitness and propriety checks conducted on the fund's operators or officers; and/or
- Fund/related group entities/operators/officers being the subject of an ongoing regulatory or criminal investigation.

6) **What date will be reflected on the Private Fund's registration certificate?**

A. The registration date of a Private Fund will be the date that a complete application has been received by CIMA - i.e. the submission date when the Private Fund has submitted all documents, fees and information as required pursuant to the PFL.

7) **Will CIMA extend the four eyes principle to a Private Fund?**

A. Yes. A minimum of two (2) directors are required for applicants that are companies.

8) **Will the two (2) director test be applied to the general partner or corporate director of a Private Fund?**

A. Yes. CIMA will require a minimum of two (2) natural persons to be named in respect of a general partner or corporate director of a Private Fund.

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<sup>3</sup> See the answer to question 2 on the Notice. However, it should be noted that directors appointed to Private Funds are not required to be registered pursuant to the Director Registration and Licensing Law (2014 Revision).

- 9) **Will marketing materials or offering documents need to be submitted as part of the application process for Private Funds?**
- A. Yes. A copy of the marketing materials, summary of terms or offering document will be required upon registration.
- 10) **How will the Alternative Investment Vehicle (“AIV”) entities under the Private Fund registered with CIMA be handled; will they also need to be separately registered?**
- A. No. AIV entities will not require a separate registration, however, information in regard to each such entity will be collected at the time of registration, with any changes to such information to be reported to the Authority as a part of the ongoing obligations of the Private Fund.
- 11) **How will the Cayman AIV entities under a non-Cayman main Private Fund (i.e. not registered with CIMA) be handled?**
- A. A Cayman AIV meeting the definition of a Private Fund will be required to register under the PFL. A group registration option, as outlined in question #10 will be available for any AIVs in the fund structure.
- 12) **Will a Private Fund that is in liquidation/being wound-up or that has commenced the liquidation/wind-up process prior to the end of the transition period be required to submit a registration application to CIMA?**
- A. A Private Fund that submits evidence (resolutions, auditor confirmation, etc.) to CIMA that its liquidation/winding-up will be completed prior to the end of the transition period will not be required to apply for registration pursuant to the relevant law.

### ***Audit Requirements***

- 13) **What are the audit requirements for Private Fund?**
- A. A Private Fund, pursuant to section 13(1) of the PFL, is required to have its accounts audited annually by an auditor approved by CIMA. The Private Fund is also required to submit its audited accounts, along with the Fund Annual Return (“FAR”), to CIMA within six months of the end of each financial year.
- 14) **Will an audit for a Private Fund be required for 2020?**
- A. Yes. A Private Fund is required to submit an audit for its 2020 financial year within six months of the financial year end or within such extension of that period as the Authority may allow.

## **Valuation**

15) **How will the valuation requirement under section 16 of the PFL be applied to Private Funds that hold assets that are not subject to regular valuation?**

A. The valuation of the assets of a Private Fund should be conducted in accordance with the Private Fund's valuation policy. Valuations of a Private Fund should be carried out on at least on an annual basis. CIMA will issue rules establishing the policies and procedures of CIMA with respect to the valuation of the assets of a Private Fund.

16) **Will CIMA expect a Private Fund to have its assets valued annually even if the investors do not require it themselves?**

A. Yes. Good market practice is for a fund to ensure that their investors are kept abreast of the performance of the fund. CIMA is of the view that while investors are aware that any capital contributions made into a Private Fund will not be distributed until the timeframe indicated in the relevant fund documents has been completed, investors should still be aware of the fund's performance on an ongoing basis. The PFL provides for various ways in which this obligation can be met.

## **Cash Monitoring Requirements**

17) **Will cash monitoring need to be done internally?**

A. A Private Fund has a choice of whether to conduct this function internally (by the investment manager) or to hire a third-party service provider to ensure that this function is carried out. Should this function be conducted internally, the Private Fund's auditor will have to confirm that it was done throughout the year, when signing off the audited financial statements.

18) **Will CIMA determine what is proper regarding the cash monitoring process or will the Private Fund decide what is a proper process?**

A. CIMA's assessment of the process undertaken by the Private Fund, in respect of cash monitoring, will seek to confirm that such process, based on the investment strategy of the fund, is sufficient having regard to the type of assets held by the Private Fund. CIMA will issue rules establishing the policies and procedures with respect to the cash monitoring requirements of a Private Fund.

19) **Will CIMA review a Private Fund's processes and advise whether improvements are necessary without risk of penalty?**

A. All regulated funds are subject to ongoing monitoring by CIMA and, in keeping with CIMA's current approach, matters will be addressed as they arise in the manner commensurate with the level of seriousness of the breach.