



APPENDIX 1 -
STATEMENT OF GUIDANCE:

Non-Fund Arrangements

XX 2020

APPENDIX 1

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APPENDIX 1

List of Acronyms

CIMA	Cayman Islands Monetary Authority
PFL	Private Funds Law
SoG	Statement of Guidance

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STATEMENT OF GUIDANCE

Non-Fund Arrangements

1. Introduction

- 1.1. This document establishes the Cayman Islands Monetary Authority's (the "Authority" or "CIMA") *Statement of Guidance on Non-Fund Arrangements* ("SoG") as contemplated by the Schedule to the Private Funds Law, 2020. The SoG should be read in conjunction with the following:
- a) The Private Funds Law ("the PFL" or "the Law");
 - b) The Private Funds (Savings and Transitional Provisions) Regulations, 2020 ("the Regulations");
 - c) The Private Funds Regulations;
 - d) The Mutual Funds Law;
 - e) The Securities Investment Business Law; and
 - f) Any other relevant laws and regulatory instruments issued by the Authority from time to time.

2. Statutory Authority

- 2.1. This SoG is being issued by the Authority in accordance with its power to do so under section 34 of the Monetary Authority Law ("the MAL") which provides that the Authority may issue rules, statements of principles or guidance:
- "(1) After private sector consultation and consultation with the Minister charged with responsibility for Financial Services, the Authority may–*
- (a) issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees and any other persons to whom and to the extent that the regulatory laws may apply; ..."*

3. Statement of Objectives

- 3.1. This SoG provides the Authority's guidance on assessing whether certain arrangements, as outlined in the Schedule to the PFL are determined to be a non-fund arrangement. Meeting the definition of a non-fund arrangement exempts that arrangement from the need for registration by the Authority as stipulated in section 5 of the PFL.
- 3.2. The measure is consistent with the Authority's statutory objectives as prescribed in the MAL, including:
- a) promoting and maintaining a sound financial system in the Islands; and
 - b) facilitating innovation in financial services business.

4. Scope of Application

- 4.1. The Authority will apply this SoG and the requirements of the Law in assessing entities seeking to register or who are registered to conduct the business of a private fund in or from the Cayman Islands.
- 4.2. The measure will be used to determine whether a fund or arrangement operating in or from the Cayman Islands falls within the scope of the PFL and is therefore required to be registered by the Authority; or whether that fund or arrangement is considered a non-fund arrangement as prescribed in the Schedule to the Law and is therefore out of scope of the Law.

5. Definitions

- 5.1. For the purpose of this SoG, the definition below is provided:
 - 5.1.1 **“Arrangement”** includes an agreement, contract, vehicle, venture, scheme, plan, programme, organisation, office, or other form of collaborative effort between or among persons or entities
 - 5.1.2 **“Private Fund”** has the same meaning as that prescribed in the Private Funds Law.

6. Non-Fund Arrangements

The following arrangements, as defined in this SoG issued by the Authority under section 34 of the Monetary Authority Law (2020 Revision), constitute non-fund arrangements. Arrangements which meet any of the following definitions are non-fund arrangements and are not considered to be private funds within the meaning or contemplation of the definition of a “private fund” under section 2 of the PFL.

6.1. **Pension Funds**

- 6.1.1 Pension fund has the same meaning as that prescribed in the National Pensions Law and includes the Public Service Pensions Fund as defined under the Public Service Pensions Law.
- 6.1.2 A scheme under which a right to benefits results from contributions made under a pension plan is not a private fund.

6.2. **Securitisation Special Purpose Vehicles**

- 6.2.1 A securitisation vehicle is a non-fund arrangement, as long as its sole purpose is to carry on:
 - a) securitisation or securitisations; or
 - b) other activities which are appropriate to accomplish that purpose.

6.3. ***Contract of Insurance***

6.3.1 Any contract of insurance which is a contract of long-term insurance or a contract of general insurance, and includes:

- a) fidelity bonds, performance bonds, administration bonds, bail bonds, customs bonds or similar contracts of guarantee, where these are—
 - i. effected or carried out by a person not carrying on a banking business;
 - ii. not effected merely incidentally to some other business carried on by the person effecting them; and
 - iii. effected in return for the payment of one or more premiums;
- b) tontines;
- c) capital redemption contracts or pension fund management contracts, where these are effected or carried out by a person who—
 - i. does not carry on a banking business; and
 - ii. otherwise carries on a regulated involving effecting or carrying out a contract of insurance as a principal;
- d) contracts to pay annuities on human life;
- e) collective insurance contracts; and
- f) social insurance contracts.

but does not include a funeral plan contract.

6.4. ***Joint Ventures***

6.4.1 A joint venture refers to an enterprise into which two or more persons ("the participators") enter for commercial purposes related to a business or businesses (other than the business of engaging in a regulated activity) carried on by them; where a participator is a member of a group, each other member of the group is also to be regarded as a participator in the enterprise.

6.5. ***Proprietary Vehicles***

6.5.1 A proprietary vehicle includes a fund sponsored and managed by a certain financial institution that invests for direct market gain rather than earning commission by trading on behalf of clients.

6.6. ***Officer, manager or employee incentive, participation or compensation schemes, and programmes or schemes to similar effect***

6.6.1 The exemption of such programmes and/or schemes excludes arrangements which are designed to enable profits from a company to be used to purchase shares or debentures which are held on behalf of

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employees, former employees or another member of the same group or their dependents. This covers most employee share option plans and other employee share incentivisation schemes.

- 6.6.2 The exclusion covers schemes in which an employee invests in securities of the employer or in a company in the employee's group (or derivatives in relation to them such as options).
- 6.6.3 Under this exemption, the term employee includes personnel who work in the business of the undertaking concerned, contributing their skills and time, including partners, directors and consultants.
- 6.6.4 Employee participation schemes generally allows participation by former employees and spouses/close relatives and this exclusion allows schemes that include such participants.

6.7. ***Holding Vehicles***

- 6.7.1 A holding vehicle includes any vehicle that holds interests in one or more other vehicles, the commercial purpose of which is to carry out a business strategy or strategies through its subsidiaries, associated vehicles or participations in order to contribute to their long-term value, and which is either a vehicle-
 - a) operating on its own account and whose interests are listed on a stock exchange specified by the Authority; or
 - b) not established for the main purpose of generating returns for its investors by means of divestment of its subsidiaries or associated vehicle, as evidenced in its annual report or other official documents.
- 6.7.2 A holding vehicle is a purely financial concern which uses its capital solely to acquire interests (normally controlling interests) in a number of operating vehicles. Although the purpose of a holding vehicle is mainly to gain control and not to operate, it will typically have representation on the boards of directors of the operating firms. Holding vehicles provide a means by which corporate control can become highly concentrated through pyramiding. A holding vehicle may gain control over an operating vehicle which itself has several subsidiaries. A holding vehicle may include a holding company, partnership or other legal entity which is not a private fund

6.8. ***Individual Investment Management Arrangements***

- 6.8.1 The management of a portfolio of investments or other property on an individual client by client basis does not amount to a private fund.

6.9. ***Pure Deposit-Based Schemes***

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6.9.1 An arrangement is a non-fund arrangement and therefore does not amount to a private fund if it is a pure deposit-based scheme, in the sense that the whole amount of each participant's contribution is a deposit which is accepted by an authorised person to accept deposits.

6.10. **Arrangements not Operated by way of Business**

6.10.1 Whether the arrangements in question are operated by way of business will depend on the facts in each case, the activity in question and the property or investment(s) concerned.

6.10.2 This exemption may include arrangements such as family trusts and a syndicate of private individuals involved in an investment club.

6.11. **Debt Issues and Debt Issuing Vehicles**

6.11.1 Vehicles that only issue debt or prescribed alternative financial instruments are generally not deemed to be issuing investment interests and therefore do not fall within scope of the PFL.

6.11.2 The arrangements for an issue of debt securities by an ordinary commercial or financial company will generally not be considered a private fund or turn the issuer into one.

6.12. **Common Accounts**

6.12.1 An arrangement is a non-fund arrangement and therefore does not amount to a private fund if:

- a) they are arrangements under which the rights or interests of participants are rights to or interests in money held in a common account; and
- b) that money is held in the account on the understanding that an amount representing the contribution of each participant is to be applied:
 - i. in making payments to him/her;
 - ii. in satisfaction of sums owed by him/her; or
 - iii. in the acquisition of property for him/her or the provision of services to him/her.

6.13. **Franchise Arrangements**

6.13.1 Franchise arrangements include any arrangement under which a person earns profits or income by exploiting a right conferred by the arrangement to use a trademark or design or other intellectual property or the good-will attached to it.

6.14. **Timeshare and long-term holiday product schemes**

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6.14.1 An arrangement is a non-fund arrangement and therefore, does not amount to a private fund if the rights of the investors are rights under a timeshare contract or a long-term holiday product contract.

6.15. ***Schemes involving the issue of certificates representing investments***

6.15.1 The exclusion relates to a certificate or other instrument which confers contractual or property rights (other than rights consisting of options):

- a) in respect of any share, debenture, alternative debenture, government and public security or warrant held by a person other than the person on whom the rights are conferred by the certificate or instrument; and
- b) the transfer of which may be effected without requiring the consent of that person;

but excluding any certificate or other instrument which confers rights in respect of two or more investments issued by different persons or in respect of two or more different government and public securities issued by the same person.

6.16. ***Clearing Services***

6.16.1 An arrangement is a non-fund arrangement and therefore does not amount to a private fund if their purpose is the provision of clearing services and they are operated by an authorised person, a recognised clearing house or a recognised investment exchange.

6.17. ***Settlement Services***

6.17.1 An arrangement is a non-fund arrangement and therefore does not amount to a private fund if their purpose is the provision of settlement services and they are operated by an authorised person or a recognised central securities depository.

6.18. ***Funeral Plan Contracts***

6.18.1 A funeral plan contract includes a contract under which a person ("the customer") makes one or more payments to another person ("the provider"); and the provider undertakes to provide, or secure that another person provides, a funeral for the customer (or some other person who is living at the date when the contract is entered into) on his/her death unless, at the time of entering into the contract, the customer and the provider intend or expect the funeral to occur within one month; but excluding certain contracts under which sums

paid will be applied towards a contract of insurance or will be held on trust.

6.19. Individual Pension Accounts

6.19.1 An individual pension account does not constitute a private fund.

6.20. Structured Finance Vehicles

6.20.1 Structured finance vehicles include entities that pool income producing assets and issue securities backed by those assets.

6.21. Preferred Equity Financing Vehicles

6.21.1 Preferred equity financing vehicles include single purpose entity, which is not an operating entity, which issues preferred stock to investors giving those investors a preference over common shareholders.

6.22. A fund of whose investment interests are listed on a stock exchange (including an over-the-counter-market) specified by the Authority by notice in the Gazette.

6.23. Occupational and Personal Pension Schemes

6.23.1 The exclusion of personal pension schemes from the scope of the Law does not extend to personal pension unit trusts which are constituted as feeder funds or comprises feeder funds.

6.24. Sovereign Wealth Funds

6.24.1 A sovereign wealth fund means a government investment fund (or pools of money) funded by foreign currency reserves but managed separately from official currency reserves which governments use to invest, typically in foreign companies.

6.25. Single Family Offices

6.25.1 A single family office has the same meaning as that prescribed in the Securities Investment Business Law.