



**CAYMAN ISLANDS MONETARY AUTHORITY
PRIVATE SECTOR CONSULTATION**

STATEMENT OF GUIDANCE – NON-FUND ARRANGEMENTS

A. Introduction

1. Section 34(1)(a) of the Monetary Authority Law (2020 Revision) ("MAL") states that:

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;

2. Requirements specific to the private sector consultation are outlined in section 4(1) of the MAL as follows:

When this Law requires private sector consultation in relation to a proposed measure -

(a) the Authority shall give to each private sector association a draft of the proposed measure, together with -

- i. an explanation of the purpose of the proposed measure;*
- ii. an explanation of the Authority's reasons for believing that the proposed measure is compatible with the Authority's functions and duties under section 6;*
- iii. an explanation of the extent to which a corresponding measure has been adopted in a country or territory outside the Islands;*
- iv. an estimate of any significant costs of the proposed measure, together with an analysis of the benefits that will arise if the proposed measure is adopted; and*
- v. notice that representations about the proposed measure may be made to the Authority within a period specified in the notice (not being less than thirty days or such shorter period as may be permitted by subsection (3)); and*

(b) before proceeding with the proposed measure, the Authority shall have regard to any representations made by the private sector associations, and shall give a written response, which shall be copied to all the private sector associations.

3. The Cayman Islands Monetary Authority (“CIMA” or “the Authority”) seeks consultation and comment from the private sector associations concerning the proposed *Statement of Guidance (“SoG”) – Non-Fund Arrangements* (attached as Appendix 1).

B. Background

4. The Private Funds Law, 2020 (“the PFL” or “the Law”) and the PFL (Commencement Order), 2020 were enacted on 7 February 2020 bringing the PFL into force on that day. The PFL provides for the registration of private funds and for incidental and connected purposes. The Private Funds (Savings and Transitional Provisions) Regulations, 2020 (“the Regulations”) establish a six (6) month transition period for the PFL which ends on 7 August 2020.
5. The non-fund arrangements referenced in the definition of a private fund in Section 2 of the PFL are clarified in the Schedule to the Law which outlines the arrangements that do not constitute a private fund. The following are the non-fund arrangements which are excluded from the scope of registration under the PFL:
 - (1) pension funds;
 - (2) securitisation special purpose vehicles;
 - (3) contracts of insurance;
 - (4) joint ventures;
 - (5) proprietary vehicles;
 - (6) officer, manager or employee incentive, participation or compensation schemes, and programmes or schemes to similar effect;
 - (7) holding vehicles;
 - (8) individual investment management arrangements;
 - (9) pure deposit-based schemes;
 - (10) arrangements not operated by way of business;
 - (11) debt issues and debt issuing vehicles;
 - (12) common accounts;
 - (13) franchise arrangements;
 - (14) timeshare and long-term holiday product schemes;
 - (15) schemes involving the issue of certificates representing investments;
 - (16) clearing services;
 - (17) settlement services;
 - (18) funeral plan contracts;
 - (19) individual pension accounts;
 - (20) structured finance vehicles;
 - (21) preferred equity financing vehicles;
 - (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;
 - (23) occupational and personal pension schemes;
 - (24) sovereign wealth funds; and
 - (25) single family offices.
6. The Authority proposes to implement, by way of issuing the new SoG, a clear framework and guidance for determining what constitutes a non-fund arrangement in the Cayman Islands. By virtue of establishing clear definitions for these types of arrangements, where needed, the measure seeks to provide

clarity on which private funds are subject to registration and regulation by the Authority within the ambit of the PFL.

C. International Standards

7. The International Organization of Securities Commissions (IOSCO) is the global standards setter for the securities sector and as part of its work has developed *Objectives and Principles of Securities Regulation*. The document establishes 38 principles of securities regulation, the objectives of which are: protecting investors; ensuring that markets are fair, efficient and transparent; and reducing systemic risk. The specific principles for collective investment schemes provide some context to the issuance of the proposed measure. The applicable principles are presented in Table I.

Table I: International Standards

No.	IOSCO Principle
24	<i>The regulatory system should set standards for the eligibility, governance, organization and operational conduct of those who wish to market or operate a collective investment scheme.</i>
25	<i>The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.</i>

D. Purpose of Proposed Measure and Consistency with the Authority’s Functions

8. The Authority, in the measure, has sought to establish guidance which relate specifically to ensuring that private funds properly assess their activities and ensure that where applicable they apply to the Authority to be registered and adhere to the provisions of the PFL.
9. The contents of the proposed SoG are in alignment with the provisions of the PFL and the overarching objective is to establish definitions for the non-fund arrangements presented in the Law, where considered necessary. The issuance of the measure will provide certain assurances that any ambiguities are resolved and therefore the operators of private funds will, where applicable, come into compliance with the Law within the timeframe set in the Regulations.

E. Jurisdictional Comparison

10. A review of five (5) jurisdictions was conducted and it was noted in all of the jurisdictions reviewed that there were clearly established registration exemptions as it relates to funds, albeit the specific funds exempted varied widely. It is important to note that the framework established in the United Kingdom by the Financial Conduct Authority is the one most similar to that in the Cayman Islands as it relates to exempted funds. Table II presents a summary of the jurisdictions reviewed.

Table II: Summary of Jurisdictional Comparison

Jurisdiction	Are there fund exemption provisions?
Bermuda ¹	Yes
The Bahamas ²	Yes
The United Kingdom ³	Yes
Isle of Man ⁴	Yes
United States of America ⁵	Yes
Cayman Islands ⁶	Yes

F. Cost and Benefit Analysis

11. The Authority has assessed the implications of issuing the SoG and the relevant costs and benefits of this proposal are presented in Table III.

Table III: Costs and Benefits of Issuing the SoG on Non-Fund Arrangements

	Costs	Benefits
CIMA	<ol style="list-style-type: none"> The Authority will incur the usual administrative costs associated with conducting industry consultation, gazetting, publication and amending internal supervisory procedures and manuals. These costs are not deemed to be overly burdensome and represent usual costs of the Authority carrying out its mandate. The major costs to CIMA are the costs of ongoing monitoring and reviewing compliance to ensure that operators of private funds which do not fall within the scope of non-fund arrangements are registered. 	<ol style="list-style-type: none"> Issuing the measure establishes clear expectations and reduces any ambiguities surrounding the non-fund arrangements established in the law.

¹ see section 10D (Registered Funds: exemption from requirements), Investments Funds Act 2006.

² see section 146 (Exemptions and modifications), Investment Fund Act 2019

³ see FCA Handbook - <https://www.handbook.fca.org.uk/handbook/PERG/13/5.html>

⁴ see schedule 3 (Exempt Schemes), Collective Investment Schemes Act 2008.

⁵ see section 6(80a –6)(E)(d)(Exemptions), Investment Company Act of 1940.

⁶ see schedule 1, Private Funds Law (Revision) 2020.

	Costs	Benefits
<i>Cayman Islands</i>	1. It is not anticipated that there will be any costs to the jurisdiction as a whole with the implementation of the measure.	1. The Cayman Islands will stand to benefit from improved reputation, as ensuring that there are measures to guide the financial sector, will prove the jurisdiction's commitment to a strong regulatory framework for its market participants. Collectively, this will inevitably have a significant and positive impact on confidence in the Cayman Islands as a strong well-regulated financial centre. 2. The jurisdiction can expect to receive improved results in international assessments with the greater clarity surrounding the regulatory and supervisory framework for private funds.
<i>Private Funds</i>	1. Operators of private funds will incur the minimal cost associated with assessing their status as a non-fund arrangement or whether they are required to be registered under the PFL.	1. Private funds will benefit from greater clarity and lessened ambiguity surrounding their status under the law and the related requirements, if any.
<i>Summary</i>	Consequent to the above, it is determined that the benefits outweigh the costs and therefore the issuance of the <i>SoG on Non-Fund Arrangements</i> should be pursued by the Authority.	

G. Consultation Feedback and Comments

12. Before proceeding with the proposed measure, the Authority shall have regard to any representations made by the private sector associations only. Feedback submitted by individuals, entities, or other bodies, unless acting on behalf of private sector associations, will not be accepted by the Authority. Representations from private sector associations must be submitted as a consolidated document, and a listing of the entities which provided feedback should be included. Private sector associations should ensure that conflicting positions are resolved prior to submission to the Authority. Where positions conflict within or across associations, the Authority will consider all available information in taking a decision, which will be at its sole discretion.

13. To ensure that all responses are given due consideration, it is important that private sector associations make clear reference to the sections of the measure being commented on, and that responses are unambiguous, clearly articulated and based on fact. The consultation process is not designed to address complaints or grievances. Feedback of this nature should be submitted through the established complaints process.
14. In cases where the feedback proposes to change a policy position of the Authority or substantially amend any requirement of the draft measure, information to support the position of the association must be provided. The table below provides an example of the Authority's expectation with regard to feedback for the proposed measure.

Reference	Example of a Helpful Comment	Examples of Comments needing more Support
Rule 4.2 ⁷	<p>In Rule 4.2 the current text omits the fair value measurement of liabilities. Also, as defined it is not asymmetrical with the Market Price definition and thus scenarios exists that fall into neither category.</p> <p>Suggested wording: <i>Hard-to-Value Securities means an asset or liability for which there is no Market Price which is required to be measured at fair value pursuant to 5.2</i></p>	<ul style="list-style-type: none"> × This is not what is done in other jurisdictions. × I don't think we should do this. × CIMA is not considering the position of the experts.

15. All feedback submitted by private sector associations will be given due consideration, nevertheless, the decision to adopt any feedback provided into a proposed measure will be at the sole discretion of the Authority.

H. **Notice of Representations**

16. The Authority seeks consultation through written comments and representations from the private sector associations concerning the proposed:

Statement of Guidance – Non-fund Arrangements

17. The Authority must receive representations by 1700hrs on **Tuesday, 18 August 2020**. Representations received after this deadline may not be considered and will not form part of the collated written response provided to private sector associations.
18. Comments and representations must be addressed to:

⁷ This example is not reflective of the content of the proposed measure.

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19. The Authority shall have due regard to any representation made by the private sector associations and industry stakeholders. The Authority shall provide a written response collating the feedback received and the Authority's position on this feedback. This response shall be copied to all relevant private sector associations only.