



REGULATORY PROCEDURE

Cancellation of Licences or Certificates of Registration for Regulated Mutual Funds

AUGUST 2022

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List of Acronyms

Acronym	Definition
CIMA	Cayman Islands Monetary Authority;
MAA	Monetary Authority Act
MFA	Mutual Funds Act
PFA	Private Funds Act

1. Introduction

- 1.1. This document establishes the Cayman Islands Monetary Authority's (the "Authority" or "CIMA") Regulatory Procedure on Cancellation of Licences or Certificates of Registration for Regulated Mutual Funds (the "Procedure"). The Procedure should be read in conjunction with the following:
- (a) *Rule - Cancellation of Licences or Certificates of Registration for Regulated Mutual Funds and Registered Private Funds* (hereinafter referred to as the "Rule");
 - (b) *Regulatory Policy - Exemption from Audit Requirement for a Regulated Mutual Fund*; and
 - (c) Any other relevant laws and regulatory instruments issued by the Authority from time to time.

2. Statement of Objectives

- 2.1. To protect the interests of investors and creditors and to facilitate an efficient process by which regulated mutual funds are made aware of (1) the requirements necessary to confirm the cessation of regulated mutual fund business; and (2) evidence that the regulated mutual fund ("Fund") must produce to demonstrate that it has not been, or is not being, wound up, transferred, converted, merged or otherwise ceasing business as a licenced or registered Fund in a manner that is prejudicial to its investors and creditors.

3. Scope of Application

- 3.1. This Procedure is applicable where the Fund is either being wound up, or has never carried on business as a Fund, or is ceasing to carry on business¹ as a Fund, or where Funds are being merged, converted or to be transferred to another jurisdiction.
- 3.2. References to any act or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced from time to time.

4. Definitions

- 4.1. **Fund** means a "regulated mutual fund" as defined in section 2 of the Mutual Funds Act ("MFA").
- 4.2. **Operator**, in respect of a Fund, is as defined under section 2 of the MFA.

5. General Conditions for Cancellation of a Licence or Certificate of Registration

- 5.1. Good standing

¹ Ceasing to carry on business, also known as ceasing to trade, denotes there is no ongoing investing with a view to receive profits or gains from the acquisition, holding, management or disposal of investments, but does not include the disposal of assets for purpose of redeeming investors from a Fund. If 'Ceasing to Carry on Business or Trade' is defined in the MFA, then the definition in the MFA prevails.

A Fund seeking to cancel its licence or certificate of registration with the Authority must be in good standing on the date of the cancellation of the licence or certificate of registration. Good standing requires that a Fund must have paid all prescribed fees, submitted all the required audited financial statements, and that there are no outstanding queries or regulatory filings with the Authority.

5.2. Administrative Fines

To avoid incurring administrative fines, a Fund shall notify the Authority within the timeframe prescribed within the Rule that it has ceased business or will cease business.

6. Core Requirements for Cancellation of a Licence or Certificate of Registration

A Fund shall submit the following to the Authority regardless of the reason for cancellation:

- 6.1. the original licence or certificate of registration, if issued by the Authority, must be submitted with the application for cancellation; or in the case of a lost licence or certificate, an affidavit signed by the operator(s), stating that the licence or certificate will be returned to the Authority if found, where applicable. Where an electronic certificate (including those relating to any change of name by the Fund) was issued by the Authority, this requirement is not applicable;
- 6.2. the prescribed fee which is payable for the voluntary surrender of the licence or certificate of registration pursuant to the MAA; and
- 6.3. a certified copy of the resolution, determination, consent or other constitutional document signed by the operator(s) and/or the investor(s) (as applicable) which indicates the date on which the Fund will cease or has ceased to carry on business as a Fund in or from the Cayman Islands.

7. Specific Requirements for Cancellation of a Licence or Certificate of Registration

An application for the cancellation of a licence or certificate of registration is considered complete when the Authority is in receipt of the core requirements under section 6 of the Procedure along with the additional documentation based on the reason for the cancellation of the licence or certificate of registration. This section of the Procedure lists the reasons for cancellation along with the corresponding documentation required with the application submitted.

7.1. **Ceasing to Carry on Business**

The following must be provided to the Authority in cases of cancellation of a licence or certificate of registration by a Fund due to the cessation of business:

7.1.1. An affidavit from or on behalf of the Operator(s) of the Fund. The contents of the affidavit must verify:

- 7.1.1.1. the reason for the cessation of business;

- 7.1.1.2. that, to the best of the Operators' knowledge or information, the Fund has operated in accordance with its articles or other constitutive documents and its offering document including adherence to all investment guidelines and restrictions and computation of the net asset value;
- 7.1.1.3. that all participating investors (such as shareholders, unit holders and limited Partners) have been properly and completely² redeemed out of the Fund or otherwise received a final distribution out of the Fund's assets legally available for distribution to investors;
- 7.1.1.4. that the Fund has not been or is not being wound up in a manner that is prejudicial to its investors and creditors; and
- 7.1.1.5. whether the Fund intends to:
 - 7.1.1.5.1. continue as a legal entity in the Cayman Islands; or
 - 7.1.1.5.2. seek striking-off from the General Registry with the applicable Registrar in the Cayman Islands.

7.2. Voluntary Liquidation of a Fund

The following must be provided to the Authority in cases of the cancellation of a licence or certificate of registration by a Fund due to the voluntary liquidation, where a third-party liquidator³ has been appointed:

- 7.2.1. Pursuant to the Companies Winding Up Rules, issued under the Companies Act:
 - 7.2.1.1. Notice of the winding up of the Fund (CWR Form No. 19 or any other prescribed form, stamped by the Registrar of Companies), where applicable; and
 - 7.2.1.2. Voluntary liquidator's consent to act (CWR Form No. 20 or any other prescribed form, stamped by the relevant Registrar of Companies), where applicable.
- 7.2.2. Where the Fund is a partnership or a trust under the relevant Acts, provide the respective notice as stamped by the relevant Registrar in the Cayman Islands;
- 7.2.3. Where the Fund has been granted an audit exemption in accordance

² Properly and completely redeemed denotes that a fund has paid out all investors and there are no residual cash or assets owed or potentially owed to investors.

³ For the purpose of this Procedure, third-party liquidator means individuals, serving as liquidators in a voluntary liquidation of a fund, who are not the operators or currently engaged service providers (excluding an auditor of the Fund).

with section 5.4.6 of the Regulatory Policy – Exemption from Audit Requirements for a Regulated Mutual Fund, the Authority will also require the following documentation before the Fund’s licence or certificate of registration can be cancelled:

- 7.2.3.1. An affidavit from or on behalf of the voluntary liquidator(s) of the Fund, the contents of which must verify:
 - 7.2.3.1.1. the reason for the liquidation;
 - 7.2.3.1.2. the period(s) covered by the voluntary liquidator’s report(s);
 - 7.2.3.1.3. that the Fund is no longer carrying on business or otherwise in operation;
 - 7.2.3.1.4. that during the course of the liquidation nothing has come to light to indicate any evidence of fraud or wrongdoing in the operation of the Fund or that any fraud or wrongdoing has been reported to the Authority;
 - 7.2.3.1.5. that all creditors have been paid in full out of the remaining assets of the Fund;
 - 7.2.3.1.6. that all investors have been distributed the assets of the Fund according to their rights and interests in the Fund; and
 - 7.2.3.1.7. that the voluntary liquidator(s) is satisfied that the Fund has not been wound up in a manner that is prejudicial to its investors or creditors.

7.2.4. Where the Fund has filed its last set of audited accounts, the Authority will require an affidavit as specified in section 7.1.1 of this Procedure.

7.3. Court-Supervised or Court-Appointed Liquidation of a Fund

The following must be provided to the Authority in cases of cancellation of a licence or certificate of registration by the Fund due to the court supervised or court appointed liquidation of the Fund:

- 7.3.1. the supervision/winding up order issued by the Grand Court of the Cayman Islands. This document is substituted for the core requirement in subsection 6.3 above; and
- 7.3.2. a copy of each report filed by the official liquidator(s) to the Grand Court of the Cayman Islands.

7.4. Transfer to another Jurisdiction

The following must be provided to the Authority in cases of cancellation of a licence or certificate of registration as a Fund due to the transfer of the legal entity to another jurisdiction:

- 7.4.1. An affidavit from the operator(s) of the Fund, the contents of which must state:
- 7.4.1.1. the reason for the transfer and name of the jurisdiction to which the Fund is being transferred;
 - 7.4.1.2. to the best of the operators' knowledge or information that the Fund has operated in accordance with its articles or other constitutive documents and its offering document including adherence to all investment guidelines and restrictions and computation of the net asset value; and
 - 7.4.1.3. whether the transfer is not prejudicial to the investors or creditors.
- 7.4.2. In addition to the affidavit, a Fund must provide confirmation that the Fund has received approval (or approval in principle) from the regulators in the jurisdiction to which it is being transferred.

7.5. Funds that never carried on Business⁴

The following must be provided to the Authority in cases of cancellation of a licence or certificate of registration of a Fund where the Fund has never carried on business as a Fund:

- 7.5.1. an affidavit from the operator(s) of the Fund attesting as to the reason why the Fund has never carried on business; and
- 7.5.2. a letter from the Fund's administrator, manager, operator or auditor (as these terms are defined in the MFA) verifying that the Fund has never carried on business as a Fund, and that any subscriptions accepted have been returned.

7.6. Does Not Meet Definition of a Mutual Fund

If a Fund does not meet the definition of a mutual fund as outlined in the MFA, but is otherwise regulated by the Authority, the Fund must nevertheless meet all regulatory requirements for cancellation. The following outlines the requirements for the cancellation of a licence or certificate of registration of a Fund when converting into a single investor fund⁵ or a registered private fund as per the Private Funds Act (as revised):

7.6.1. *Single Investor Fund*

The following outlines the requirements for the cancellation of a licence or certificate of registration of a Fund when converting into a single investor fund:

⁴ A Fund that has never accepted subscriptions, or accepted subscriptions but never launched and returned such subscriptions.

⁵ For the purpose of this Procedure, a single investor fund means a Fund which no longer meets the definition of Mutual Fund as defined in section 2 of the MFA by reason of the absence of the purpose or effect of which is the pooling of investors' funds with the aim of spreading investment risks.

- 7.6.1.1. An affidavit from the operators of the Fund attesting to the following:
 - 7.6.1.1.1. that the Fund has a single investor, and that investor has agreed to the cancellation of licence or registration of the Fund with the Authority;
 - 7.6.1.1.2. All other investors have been properly and completely redeemed (where previous investors exist);
 - 7.6.1.1.3. that, to the best of the operators' knowledge or information, while licenced or registered with the Authority, the Fund operated in accordance with its articles and other constitutive documents and its offering document, including adherence to all investment guidelines and restrictions and computation of the net asset value; and
 - 7.6.1.1.4. that while licensed or registered with the Authority, the Fund has not operated in a manner that is prejudicial to its investors and creditors.

7.6.2. *Conversion to a Registered Private Fund*⁶

When a Fund no longer meets the definition of a mutual fund because the equity interests are not redeemable at the option of the investors, the Authority requires:

- 7.6.2.1. the updated offering documents or marketing materials, or in the absence of these documents, consent from the investors outlining that the Fund is changing from open-ended to closed-ended and will cease to meet the definition of a mutual fund in the MFA;
- 7.6.2.2. a certified copy of the memorandum and articles of association or other constitutive documents outlining the restriction on the redemption rights of the close-ended shares;
- 7.6.2.3. an affidavit from the operators of the Fund attesting to the following:
 - 7.6.2.3.1. the reason for the conversion of the Fund;
 - 7.6.2.3.2. that, to the best of the operators' knowledge or information, while licenced or registered with the Authority, the Fund operated in accordance with its articles and other constitutive documents and

⁶ If a Fund's equity interests become investment interests given the closed-ended nature of the offering and as a result is required to register as a private fund, a simultaneous registration application will be required to be filed under the PFA via Registrations@cima.ky.

its offering document, including adherence to all investment guidelines and restrictions and computation of the net asset value;

7.6.2.3.3. that the conversion from an open-ended fund to a closed-ended fund is being done in accordance with the Fund's offering document and constitutive documents; and

7.6.2.3.4. that while licenced or registered with the Authority, the Fund has not operated in a manner that is prejudicial to its investors and creditors.

7.6.3. *Non-Fund Arrangements*

In circumstances where, for reasons other than those described in either in 7.6.1 or 7.6.2 above, an entity does not meet the definition of a Fund or registered private fund as defined within the relevant Acts, the Authority will require the following:

7.6.3.1. an affidavit from its operators which must, at a minimum, verify or attest to the following plus any other such inclusions as may be applicable to the entity's situation:

7.6.3.1.1. the current or intended object and scope of activities which classify the entity as a non-fund arrangement;

7.6.3.1.2. that to the best of the operator's knowledge or information, while licenced or registered with the Authority, the entity operated in accordance with its memorandum and articles of association or other constitutive documents and/or its offering document, including adherence to all investment guidelines and restrictions and computation of the net asset value, where applicable;

7.6.3.1.3. that in the case of a conversion from a Fund to a non-fund arrangement, said conversion is being done in accordance with its offering and constitutive documents, where applicable;

7.6.3.1.4. that while licenced or registered as a Fund with the Authority, the entity had not operated in a manner prejudicial to its investors and/or creditors.

7.6.3.2. The entity shall also provide, in support of the representations made within the above referenced affidavit, a certified copy of the updated memorandum and articles of association or other constitutive documents, the content of which must reflect its conversion to a non-fund arrangement.

7.7. **Funds Dissolving by way of a Merger**

7.7.1. *Terminating or Dissolving Fund*

In case of a merger the terminating or dissolving fund shall provide the following to the Authority:

- 7.7.1.1. a cover letter from or on behalf of the operator(s) of the Fund outlining the request to merge the Funds;
- 7.7.1.2. a certified copy of the resolution of the operators or the participating investors (shareholders, unit holders, etc.) which includes material details of the proposed merger (merger plan) and specifies the dissolving and surviving entities;
- 7.7.1.3. an affidavit from or on behalf of the operator(s) of the Fund. In case of an administered mutual fund, the affidavit can also be provided by the locally licenced mutual fund administrator. The contents of the affidavit must verify that:
 - 7.7.1.3.1. the dissolving fund is not being merged with the surviving entity in a manner prejudicial to the investors, shareholders or creditors; and
 - 7.7.1.3.2. the dissolving fund has obtained all required operators, shareholders and creditor consents in accordance with the MFA.

7.7.2. *Surviving Fund*

The surviving fund shall provide the following to the Authority in the case of a merger:

- 7.7.2.1. a copy of the updated offering document or supplement to the offering document outlining material details of the merger and other material changes;
- 7.7.2.2. a certified copy of the memorandum and articles of association or other constitutive document that reflect details of the merger and all appropriate changes required under the relevant Acts; and
- 7.7.2.3. a certified copy of the Certificate of Merger.

7.8. **Deregistration of Master Funds**

The following outlines the reasons along with the respective required documentation for the cancellation of the certificate of registration of a master fund. If any master fund applying for deregistration has one or more regulated feeder funds that are active, but not in good standing, the master fund will not be deregistered until the regulated feeder funds are completely terminated.

7.8.1. *Ceased to carry on business as a Master Fund*

The following must be provided to the Authority when applying to cancel a certificate of registration as a Fund on the basis that the master fund has ceased to carry on business or is being dissolved or liquidated:

7.8.1.1. An affidavit from or on behalf of the operator(s) of the master fund, the contents of which must verify:

7.8.1.1.1. that the master fund does not have one or more regulated feeder funds;

7.8.1.1.2. the reason for the cessation of business, liquidation or winding up of the master fund;

7.8.1.1.3. that, to the best of the operators' knowledge or information, the master fund has operated in accordance with its articles or other constitutive documents and its offering document including adherence to all investment guidelines and restrictions and computation of the net asset value;

7.8.1.1.4. that all participating investors (such as shareholders and unit holders) have been properly and completely redeemed out of the master fund; and

7.8.1.1.5. that the master fund has not been or is not being wound up in a manner that is prejudicial to its investors and creditors.

7.8.1.2. In cases where a liquidator has been appointed who is a third-party liquidator, the following must be provided to the Authority:

7.8.1.2.1. notice of the winding up of the Fund (CWR Form No. 19 or any other prescribed form, stamped by the relevant Registrar in the Islands); and

7.8.1.2.2. voluntary liquidator's consent to act (CWR Form No. 20 or any other prescribed form, stamped by the relevant Registrar in the Islands).

7.8.1.2.3. a copy of the liquidator's report, where the Fund is not in a good standing, before the Fund can be terminated;

7.8.1.2.4. Where the Fund is a partnership or a trust, provide the respective Notice as stamped by the relevant Registrar in the Cayman Islands.

7.8.1.3. In case of a court-supervised or court-appointed liquidation, the court order should be provided to the Authority.

7.8.2. *Master Fund that does not meet the definition under the MFA*⁷

The following must be provided to the Authority when applying to cancel a licence or certificate of registration on the basis that the Fund does not meet the definition of a master fund under the MFA:

7.8.2.1. An affidavit from the operator(s) of the master fund attesting to the following:

7.8.2.1.1. the master fund no longer meets the definition of a master fund under the MFA;

7.8.2.1.2. that, to the best of the operators' knowledge or information, while registered with the Authority the Fund operated in accordance with its articles and other constitutive documents and its offering document including adherence to all investment guidelines and restrictions and computation of the net asset value;

7.8.2.1.3. that while registered with the Authority, the master fund has not operated in a manner that is prejudicial to its investors and creditors; and

7.8.2.1.4. the investors have been advised of their rights.

8. Additional Information

8.1. Unless a Fund qualifies for an audit waiver, it must provide audited accounts either (a) from the date of the last financial year-end (for which audited statements have been filed) to the date of final distributions to investors; or (b) from the date of the last financial year-end (for which audited statements have been filed) to the date of the final net asset value calculation, with the subsequent events note confirming that final distributions have been made to investors.

8.2. In circumstances where a third-party liquidator has been appointed and final audited accounts are being produced, the final audited accounts must cover, at a minimum, the period from the date of the last financial year-end (for which audited statements have been filed) to the date of appointment of the third-party liquidator.

8.3. The Authority may require additional information to be provided to cancel a Fund's licence or certificate of registration.

⁷ In the event that a re-registration under the MFA is applicable, a simultaneous re-registration application shall be filed via Registrations@cima.ky, unless the Fund no longer meets the definition of a Fund.



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