



# **REGULATORY PROCEDURE**

## **Cancellation of Certificates of Registration for Registered Private Funds**

**AUGUST 2022**



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## **Table of Contents**

List of Acronyms .....	4
1. Introduction .....	5
2. Statement of Objectives.....	5
3. Scope of Application .....	5
4. Definitions.....	5
5. General Conditions for Cancellation of a Certificate of Registration .....	5
6. Core Requirements for Cancellation of a Certificate of Registration .....	6
7. Specific Requirements for Cancellation of a Certificate of Registration .....	6
8. Additional Information .....	12



## List of Acronyms

<b>Acronym</b>	<b>Definition</b>
<b>CIMA</b>	Cayman Islands Monetary Authority
<b>MAA</b>	Monetary Authority Act
<b>MFA</b>	Mutual Funds Act
<b>PFA</b>	Private Funds Act

## 1. Introduction

- 1.1. This document establishes the Cayman Islands Monetary Authority's (the "Authority" or "CIMA") *Regulatory Procedure - Cancellation of Certificates of Registration for Registered Private Funds* (hereinafter referred to as 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 Private Funds*; 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 registered private funds are made aware of (1) the requirements necessary to confirm the cessation of registered private fund business; and (2) evidence that the registered private 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 regulated 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 business<sup>1</sup> 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 "registered private fund" as defined under section 2 of the Private Funds Act ("PFA").
- 4.2. **Operator**, in respect of a Fund, is as defined under section 2 of the PFA.

## 5. General Conditions for Cancellation of a Certificate of Registration

- 5.1. Good standing

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<sup>1</sup> 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 PFA, then the definition in the PFA prevails.

A Fund seeking to cancel its certificate of registration with the Authority must be in good standing on the date of the cancellation of the 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 in the Rule that it has ceased business or will cease business.

**6. Core Requirements for Cancellation of a Certificate of Registration**

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

- 6.1. the original certificate of registration, if issued by the Authority, must be submitted with the application for cancellation; or in the case of a lost certificate, an affidavit signed by the operator(s), stating that the 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 surrender of the 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 Certificate of Registration**

Applications for the cancellation of a 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 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 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, limited partnership agreements or other constitutive documents and its marketing materials

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 completely redeemed<sup>2</sup> 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 down 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 certificate of registration by a Fund due to the voluntary liquidation, where a third-party liquidator<sup>3</sup> 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 relevant Registrar), 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), where applicable.
- 7.2.2. Where the Fund is a partnership or trust under the applicable acts, provide the respective notice stamped by the relevant Registrar in the Cayman Islands.
- 7.2.3. Where the Fund has been granted an audit exemption in accordance with section 5.4.6 of the Regulatory Policy – Exemption from Audit Requirements for a Private Fund, the Authority will also require the following documentation before the Fund's certificate of registration can be cancelled:

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<sup>2</sup> 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.

<sup>3</sup> 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).

- 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 certificate of registration by the Fund due to the court supervised or court appointed liquidation of the Fund:

- 7.3.1. the supervision or 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;
- 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 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. that, to the best of the operators' knowledge or information, the Fund has operated in accordance with its articles or limited partnership agreements or other constitutive documents and its marketing materials 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.

7.5. **Funds that never carried on Business<sup>4</sup>**

The following must be provided to the Authority in cases of cancellation of a 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 the Fund has never carried on business; and
- 7.5.2. a letter from the Fund's administrator, manager, operator or auditor verifying the Fund has never carried on business as a Fund, and that any capital contributions accepted have been returned.

7.6. **Does Not Meet Definition of a Private Fund**

If a Fund does not meet the definition of a private fund as outlined in the PFA, but is registered with the Authority anyway, the Fund must nevertheless meet all regulatory requirements for cancellation. The following outlines the requirements for the cancellation of a certificate of registration of a Fund when converting into a single investor fund<sup>5</sup> or mutual fund, as per the MFA:

7.6.1. *Single Investor Fund*

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

- 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 registration of the Fund with the Authority;
  - 7.6.1.1.2. all other investors have been properly and

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<sup>4</sup> A Fund that has never accepted capital contributions, or accepted contributions but never launched and returned such contributions.

<sup>5</sup> For the purpose of this Procedure, a single investor fund means a Fund which no longer meets the definition of private fund as defined in section 2 of the PFA 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.

completely redeemed (where previous investors exist);

7.6.1.1.3. that, to the best of the operators' knowledge or information, while registered with the Authority the Fund operated in accordance with its articles, limited liability partnership agreement or other constitutive documents and its marketing materials, including adherence to all investment guidelines and restrictions and computation of the net asset value; and;

7.6.1.1.4. that while 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 Regulated Mutual Fund<sup>6</sup>**

When a Fund no longer meets the definition of a private fund because the investment interests are redeemable at the option of the investors, the Authority requires:

7.6.2.1. the updated offering document or in the absence of this document, a consent from the investors confirming that the Fund is changing from closed-ended to open-ended and will cease to meet the definition of a private fund in the PFA;

7.6.2.2. a certified copy of the memorandum and articles, limited liability partnership agreement or other constitutive documents evidencing removal of the prior 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 registered with the Authority, the Fund operated in accordance with its articles, limited liability partnership agreement or other constitutive documents and its marketing materials, including adherence to all investment guidelines and restrictions and computation of the net asset value;

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

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<sup>6</sup> If a Fund's investment interests become equity interests given the open-ended nature of the offering and as a result the Fund is required to register as a mutual fund, a simultaneous registration application will be required to be filed under the MFA via [Registrations@cima.ky](mailto:Registrations@cima.ky).

- 7.6.2.3.4. that while 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, the entity does not meet the definition of a Fund or a regulated mutual fund as defined in 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 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, evidencing the object and scope of activities as 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.) of the Fund, 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, the contents of which 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 PFA.

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 marketing materials or 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 that reflect details of the merger and all appropriate changes required under the relevant Act; and
- 7.7.2.3. a certified copy of the certificate of merger.

**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 certificate of registration.



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