

# Anchin Alert

**Anchin, Block & Anchin LLP**  
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## **The Cayman Islands Launch New Legislation for Private and Mutual Funds**

The Cayman Island government recently passed new laws for private and mutual funds, designed under recommendations from the European Union (“EU”) and other international governments. They created these regulations to increase oversight and confidence in Cayman Islands funds, while still making it a popular jurisdiction for fund formation. This article covers the upcoming requirements under these laws along with when they will go into effect. One should be aware that the Cayman Islands government defines “Mutual Funds” and “Private Funds” slightly differently than we would in the U.S., so we’ve attempted to clarify, below.

### **Mutual Fund Law Amendment**

Previously, mutual funds (i.e. traditional investment partnerships or hedge funds) were exempt from registration if they had 15 or fewer investors, and an investor majority had the capability to appoint or remove the operator of the fund. The new amendment removed this exemption. Moving forward, these mutual funds will need to register with CIMA, pay an annual registration fee, meet annual return requirements, maintain accessible records and submit to an annual audit from a CIMA-approved Cayman Islands based auditor.

### **New Private Fund Registration Requirements**

The Private Funds Law, 2020 will tighten requirements for closed-end, private funds (i.e. private equity or venture capital funds) in the Cayman Islands such that they are controlled similarly to mutual funds. Under the new requirements, private funds incorporated or established in the Cayman Islands, or offering to the public in the jurisdiction, must register with the Cayman Islands Monetary Authority (CIMA) and pay a registration fee.

Unregistered private funds will not be allowed to accept any investor funds while operating in the Cayman Islands. Unregistered funds will still be allowed to solicit potential investors and receive capital commitments, but not accept investor funds until their registration is complete, which must occur within 21 days of accepting an investor commitment.

Failure to register carries a penalty of up to \$122,000.

### **Ongoing Requirements**

Along with registration, private funds will need to file an annual return with CIMA, pay an annual registration fee, maintain adequate records for potential inspections and have their financial statements audited annually by a CIMA-approved, Cayman Islands based auditor.

In addition, private funds will also need to follow procedures for valuation of fund assets, the safekeeping of assets, cash monitoring and identification of securities. Most of these requirements are consistent with current best practices, so compliance should not place undue burdens on fund managers. Finally, the law gives the Cayman Islands' government more authority and oversight over private funds.

CIMA will examine registration applications and determine whether applicants meet their criteria. They will also be able to audit funds and fine those that are not following the new law. In cases of non-compliance, CIMA can take more severe measures like restricting operations, appointing a third-party to direct fund management or deregistering the fund.

## **Applicability and Exceptions**

This law applies to any private fund, which are defined by Cayman Island law as: "any company, unit trust or partnership whose principal business is the offering and issuing to investors of its participating, non-redeemable investment interests, the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and enabling investors to receive profits or gains from such a vehicle's investment activity, where

1. the holders of investment interests do not have day-to-day control over the vehicle's investment activities;
2. the investments are managed as a whole by or on behalf of the fund operator for reward based on the vehicle's assets, profits or gains."

The law does not cover single investor funds, mutual funds already registered under the Cayman Island Mutual Funds Law, or non-fund arrangements like pensions, joint ventures, structured finance vehicles, and sovereign wealth funds. There are also exceptions for EU-regulated funds and certain overseas private funds soliciting Cayman Island residents for investment.

## **Implementation Timeline**

These changes become effective August 7, 2020, with early registration allowed.

For more information and for help getting your fund prepared for registration, please contact your Anchin Relationship Partner or Jeffrey Rosenthal at [Jeffrey.Rosenthal@anchin.com](mailto:Jeffrey.Rosenthal@anchin.com) with any questions that you may have.



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