

# LEGAL UPDATE

## Are you on course to register your Cayman Private Fund with CIMA before the 7<sup>th</sup> August 2020 Deadline?

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The Private Funds Law, 2020 (the "**Law**") which came into force on 7<sup>th</sup> February 2020 requires all private funds (e.g. Private Equity funds, Real Estate funds, Venture Capital funds, and certain Private Credit funds) which fall within its scope which were either (i) launched prior to 7<sup>th</sup> February 2020 or (ii) launched since 7<sup>th</sup> February 2020, to register with the Cayman Islands Monetary Authority ("**CIMA**") before 7<sup>th</sup> August 2020. The Law refers to these closed-ended funds as "Private Funds". A copy of our previous legal update is attached for your information.

### Regulatory Requirements for Private Funds

Bearing in mind that the Law has introduced a number of new legal requirements for existing Private Funds, we recommend that you seek advice from Cayman legal counsel (1) as to whether or not your investment fund falls within the scope of the Law and therefore needs to register with CIMA before the deadline (not all closed-ended investment funds fall within the scope of the Law), and (2) as to how to satisfy these requirements in order to register your Private Fund before the 7<sup>th</sup> August deadline.

- i. **Audit** – Your Private Fund will be required to undertake an audit for its 2020 financial year. Do you require any recommendations as to audit firms? When will the first audit be required?
- ii. **Valuation of assets** – The Law has introduced new requirements regarding the valuation of your Private Fund's assets. Does your Private Fund have a valuation policy? Do you require any recommendations as to valuation service providers?
- iii. **Safekeeping of fund assets** – The Law has introduced new requirements regarding the safekeeping of your Private Fund's assets. Does your Fund have a custodian? How and on what basis can your Private Fund apply to CIMA for an exemption from this requirement?
- iv. **Cash monitoring** – The Law has introduced new requirements regarding cash monitoring for your Private Fund. How can you introduce a mechanism to deal with this new requirement? Will cash monitoring need to be done internally?
- v. **Identification of securities** – The Law has introduced new requirements regarding maintaining identification procedures and records for listed securities that your Private Fund may hold. Does your Private Fund hold any listed securities?

### Other matters for your Private Fund to review

1. **Director Appointments** – Does the general partner or corporate director of your Private Fund have only one natural person as Director. If yes, then it will need to make

one or more appointments as CIMA will apply the two (2) directors test to the general partner or corporate director of a Private Fund.

2. **AML Regime** - Does your Private Fund have an Anti-Money Laundering (AML) framework focused on ensuring that it adheres to the Cayman Islands AML regime when onboarding and monitoring investors? Has your Private Fund undertaken a risk assessment of its AML policies and procedures?
3. **AML Officers** – Has your Private Fund appointed AML Officers?
4. **FATCA/CRS Registration** – Has your Private Fund put into place a mechanism for dealing with FATCA/CRS registration and annual reporting?

**Timing:** It will take some time to make changes (including amending Fund documents, appointing Directors, etc.) and to appoint service providers who can assist with helping your Private Fund to satisfy the requirements set out above. Therefore we recommend taking steps now to commence the process. **Please contact us for legal advice and recommendations on effectively satisfying the new legal requirements and registering your Private Fund successfully with CIMA before the deadline of 7 August 2020.**

**This publication is not intended to be a substitute for specific legal advice or a legal opinion. For specific advice on registering your Private Fund with CIMA, please contact your usual Loeb Smith attorney or any of:**

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