



Cayman Islands Mutual Funds Amendment and Private Funds Legislation: **What You Need To Know**

Legislation from the Cayman Islands Ministry of Financial Services and Home Affairs has officially passed and promises to change the way financial professionals do business there. While the legislation brings the Caymans more in line with the rest of the financial world and will ultimately result in greater investor—and regulatory—confidence and transparency, it significantly changes many familiar standard operating procedures.

The new legislation is broken into two parts: [The Mutual Funds \(Amendment\) Bill, 2020](#) and the [Private Funds Bill, 2020](#). The most notable feature of the Mutual Funds Amendment is the removal of a previous rule exempting funds with fewer than fifteen investors from registration with the Cayman Islands Monetary Authority (CIMA). Smaller mutual funds who haven't had to register before should prepare to do so.

The new Private Funds Bill, however, is a bit more complicated.



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First, it's important to note that for the purposes of the Bill, a private fund is defined as one that pools investor funds and is managed by the operator of the fund, as opposed to by the holders of the investment interests. Following this definition, the legislation's thirty-four pages lists dozens of changes and clarifications.

While every financial professional should thoroughly review the entire legislation, the Alternative Investments team at Richey May suggests particular attention be paid to the following sections:

(5) Requirement for registration

To begin or continue doing business in the Caymans, private funds must submit an application for registration within twenty-one days of accepting capital commitments from investors, at which point the appropriate annual registration fee must be paid. This applies to any fund incorporated or established in the Cayman Islands, as well as funds not incorporated in the Islands but offered to the public there.

(8) Risk-based supervision of private fund

Once registered, private funds are not entirely off the hook. In fact, they may be checked with ongoing risk-based monitoring at any time.

(10) Private fund to pay annual registration fee

The annual registration fee's amount varies but must be paid each year by January 15th to avoid additional fees and consequences.

(16) Valuation

Private funds must establish procedures for proper valuation of assets. These valuations must be completed annually at a minimum, or more often depending on asset type. They should be performed by a qualified, independent third-party professional—or possibly the fund's manager if the valuation is separate from the portfolio management and potential conflicts of interest are monitored and disclosed to investors. The fund may also appoint an administrator to perform valuations.

(17) Safekeeping of fund assets

Each fund must appoint a custodian responsible for both holding the segregated accounts making up the private funds, as well as verifying that the fund holds title to any other assets and maintaining a record of those assets. Note that a custodian may not be required depending on the nature of the fund, but CIMA must be notified. In addition, funds without appointed custodians must have someone else essentially filling that role. This could either be an administrator/other independent third party or the fund manager/operator, as long as the duties do not intersect with portfolio management or present an undisclosed conflict of interest.

(18) Cash monitoring

Private funds are also required to appoint someone responsible for cash monitoring. This could be an independent third-party or the fund's manager/operator. If it is the manager or operator, the cash monitoring function must be kept independent from the portfolio management function as well as free from conflicts of interest. Their duties are to monitor cash flow, check that cash is in accounts under the private fund's name or account, and make sure that investors receive payments.

(19) Identification of securities

A record of the International Securities Identification Numbers for securities traded or held by private funds must be maintained and made available to CIMA upon request.

(20) Special measures

Special measures, including account audits or reports, may be enacted for any account suspected or at risk of breaching requirements.

(21) Obligation of auditor

Auditors must immediately provide written notice to CIMA if they have information or suspicions that the fund:

- May not be able to meet obligations
- Conducts business in a manner prejudicial to its investors or creditors
- Is not keeping sufficient records
- Is carrying on business in a fraudulent/criminal manner
- Not compliant with applicable laws and regulations

In addition, CIMA may require auditors found to be uncompliant to be removed and replaced.

This list is certainly not exhaustive; the Private Funds Bill, 2020 contains dozens of new regulations and requirements that must be strictly followed. Translating legislation can be a confusing and cumbersome process, but noncompliance can have devastating consequences. If you have specific questions about the new legislation, contact Stephen Vlasak, our Alternative Investment partner, at svlasak@richeymay.com or visit www.richeymay.com.