

Regulatory Update Q3



Welcome to Athena's quarterly industry update!

It is our pleasure to present this summary of the latest legal and regulatory developments in the Cayman Islands affecting the alternative investment industry. The environment is changing more rapidly than ever in these extraordinary times and, whilst there are many specific updates available, we wanted to let you have an outline of the key changes to ensure that you are aware of the major developments during Q3.

Last month, the big news for Cayman was the European Union's (EU) confirmation of Cayman's removal from the EU list of noncooperative jurisdictions for tax purposes. This followed Cayman's adoption of changes to its regulatory framework to address EU economic substance requirements by, amongst other things, introducing the requirement for registration and thus regulatory oversight of investment funds, including private funds, operating in or from the Cayman Islands.

Many of the jurisdictional enhancements made by the Cayman Islands this year and over the last several years have been designed to keep up with the increased globalization of the international finance community. As a leading offshore jurisdiction, Cayman has been an early adopter of many global initiatives to meet the global standards set by the Organisation for Economic Cooperation and Development and the EU in relation to tax transparency and the inclusive framework on base erosion and profit shifting.

The Cayman Islands government, the Cayman Islands Monetary Authority (CIMA) and key industry stakeholders have worked tirelessly since February of this year, amidst management of the Covid-19 global pandemic, in developing and implementing an appropriate regulatory framework to address EU concerns. The results of this collaborative effort include: (i) a best-in-class regulatory framework for investment funds; (ii) enhanced investor protection measures for investors in private funds; and (iii) the removal from the EU list of non-cooperative jurisdictions. Cayman continues to show its resilience as a leader and in maintaining its position as a jurisdiction of choice for asset managers and investors around the world!

Below is look at the Q3 regulatory developments in case you missed them:

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Disclaimer: The information provided does not, and is not intended to, constitute legal advice, instead, the information herein is for general informational purposes only. Please contact your usual Cayman counsel for specific legal advice on any of the matters outlined below.

DEFINITION OF 'PRIVATE FUND' UNDER THE PRIVATE FUNDS LAW, 2020 EXPANDED

The Private Funds (Amendment) Law, 2020 came into effect on 7 July 2020, to fulfill the Cayman Islands commitments to the EU and to facilitate the removal of the Cayman Islands from the EU list of non-cooperative tax jurisdictions. Please see our Client Alert [here](#) which sets out the key amendments made.

CIMA PUBLISHES UPDATE TO FAQ ON 2020 AUDIT REQUIREMENTS: PRIVATE FUNDS LAW, 2020

On 22 July, CIMA's FAQ in relation to the Private Funds Law, 2020 (as revised) (PF Law) (originally published in April and updated in May) was been updated to provide further guidance on transitional provisions in relation to the 2020 audit requirements for Private Funds. Please see our Client Alert [here](#) which sets out the additional questions. CIMA's published FAQ on the PF Law can be found [here](#).

CIMA PUBLISHES NEW REGULATORY POLICY FOR PRIVATE FUNDS – EXEMPTION FROM VALUATION REQUIREMENT

On 22 September, CIMA issued a new regulatory policy setting out the limited circumstances where a private fund may be granted an exemption from the requirement to have asset valuation procedures in place. Such exemptions may be absolute or conditional.

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Absolute exemptions may be granted in the following circumstances:

- where a Cayman Islands court has frozen the assets of the fund;
- where, as part of a mutual legal assistance treaty, there is an agreement by the Cayman Islands to repatriate the proceeds of the private fund.

Conditional exemptions may be granted for up to one year in the following circumstances:

- a fund has not launched but does not wish to be deregistered;
- a fund has not launched and wishes to be deregistered;
- a fund is unable to complete a valuation due to events such as bankruptcy proceedings, legal or regulatory enforcement actions related to the fund or to a significant underlying investment position of that fund;
- a fund has been placed in compulsory liquidation by order of a court of a competent jurisdiction and the Authority is satisfied with the appointment of the liquidator and the scope of the liquidator's review.

TRANSITIONAL PERIOD DEADLINE FOR REGISTRATION OF PRIVATE FUNDS AND LIMITED INVESTOR FUNDS HAS PASSED

On 7 August, the deadline for the transitional period for registration of closed-ended funds falling under the scope of the Private Funds Law, 2020 (as amended) and limited investor funds falling under the scope of the Mutual Funds Law (2020 Revision) (as amended) passed. Funds then had until 31 October to complete any outstanding formalization requirements in connection with the registrations.

It is important for fund operators to spend some time becoming familiar with the regulatory obligations now applicable to such covered funds, including CIMA's new rules and statements of guidance which can be found on CIMA's website under the heading Regulated Sectors/Investment Funds/ Regulatory Measures found [here](#).

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In relation to CIMA's rules and statements of guidance (originally published in May 2020), it should be noted that there have been some updates and revisions to these rules following private sector consultation, the latest revisions of which have been to the **Rule - Calculation of Asset Values – Regulated Mutual Funds** (July 2020), the **Rule - Calculation of Net Asset Values – Registered Private Funds** (July 2020) and the **Rule on Segregation of Assets for Mutual Fund and Private Funds** (September 2020).

ECONOMIC SUBSTANCE GUIDANCE NOTES (V3.0)

On 13 July, the Department for International Tax Cooperation (DITC) issued updated Economic Substance Guidance Notes following feedback from private sector consultations, the Secretariat to the OECD Forum on Harmful Tax Practices and the EU Commission. A copy of the updated guidance notes can be found [here](#).

AML UPDATE REMINDER

From our previous regulatory updates, you will have seen that, with effect from 5 August 2020, certain key changes to the Cayman Islands' Anti Money Laundering ("AML") regime came into effect. One of the most significant of these is reliance on the Anti Money Laundering Steering Group (AMLSG) list of jurisdictions with equivalent AML/CFT legislation ("Equivalent Jurisdictions") which was removed from use and application to Cayman Islands domiciled investment entities and funds when risk-assessing customers, investors or investments. The Equivalent Jurisdiction list allowed persons conducting relevant financial business from or within the Cayman Islands to place reliance on AML / CFT legislation of the specified jurisdictions for simplified due diligence. Consequently, now the persons conducting the relevant financial business (e.g. the fund or the fund's administrator) are themselves responsible for determining the AML risk ratings applicable to each country. The internal country AML risk classifications and the application on investors should be reviewed to ensure compliance. In addition, when engaging service providers, country risk must specifically be

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considered prior to regulated entities, such as investment funds, entering into outsourcing arrangements.

If you would like further details or to discuss any of the updates herein, please contact us below:

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