

CIMA publishes regulatory procedures for de-registration of Cayman Islands investment funds

Briefing Summary: In August 2022, following a period of industry consultation, the Cayman Islands Monetary Authority ("CIMA") has published a set of revised rules and regulatory procedures (together, the "Procedures") on the cancellation of licences or certificates of registration for regulated mutual funds ("mutual funds") and registered private funds ("private funds").

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The Procedures reflect updates to the de-registration process for mutual funds and establish for the first time the de-registration process for private funds, which aim to create a streamlined and harmonised regime for regulated funds.

Key changes to the regime

The main changes to the de-registration regime relate to the removal of the interim "License under Termination" (LUT) or "License under Liquidation" (LUL) status during a fund's de-registration process. Previously, a fund which had submitted some but not all of its de-registration documents would generally be removed from "Active" status and placed under LUT or LUL status, and would then be eligible for a 50% reduction in CIMA's annual fees pending completion of the de-registration. There is no longer an interim status under the updated Procedures. A fund will remain fully registered, and thus liable for the full amount of CIMA's annual fees, until it has completed the de-registration process and its certificate of registration has been formally cancelled by CIMA.

Documents to be submitted

The documents required to be submitted to CIMA for the de-registration of a fund remain substantially the same under the new regime, with amendments providing flexibility for typical private funds.

In the case of a mutual fund or a private fund which intends to be de-registered on the basis that it has ceased to carry on business, the following must be provided to CIMA:

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- the original certificate of registration, if any, or an affidavit from the operator of the fund in the case of a lost original certificate – CIMA has clarified in the Procedures that this requirement is not applicable where only an electronic certificate (including any certificate of change of name) has been issued;
- a certified copy of the resolution (or equivalent) signed by the operator and/or the investors 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 (meaning there is no ongoing investing with a view to receive profits or gains from the acquisition, holding, management or disposal of investments, but not including the disposal of assets for purpose of redeeming investors from a fund);
- an affidavit from the operator which confirms, among other things, the reason for the cessation of business, and that all participating investors have been properly and completely redeemed out of the fund or otherwise received a final distribution out of the fund's assets legally available for distribution to investors – CIMA has included the latter option which more accurately reflects the operation of closed-ended private funds; and
- the prescribed fee payable for the surrender of the certificate of registration.

A fund may also apply to be de-registered on other basis as set out in the Procedures, such as voluntary liquidation, transfer to another jurisdiction, or conversion from a mutual fund to a private fund (or vice versa).

In addition, the fund (via its auditor) will be required to submit 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. In some cases it may be possible to obtain an audit waiver: for instance where the fund launched but did not raise enough capital to be sustainable. Where a private fund has not called any capital, it can file a declaration to that effect and no waiver is required.

The fund must also be in good standing (meaning all CIMA fees are paid up) before the de-registration will be approved.

Timing and practical considerations

Previously, a mutual fund which intended to cease business was required to notify CIMA on the earlier of 21 days from the date the fund ceased business, or before 31 December of the year the fund ceased business. This was particularly onerous for funds which ceased business at the end of the year. The Procedures now provide for a single timeline. A mutual fund or a private fund should notify CIMA within 21 days from the date the operator or investors of the fund resolve that the fund shall cease to carry on business.

As a practical matter, there is generally a two-step filing process for a de-registration application. As noted above, notification must be made to CIMA promptly after ceasing to carry on business. The additional documentation would be submitted separately once available.

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If you wish to commence de-registration prior to the end of 2022, please ensure to include the 2023 CIMA fees, fund annual return filing fees, audit fees and registered office fees into the final net asset value calculation or final distributions as contingent liabilities, as the fund will remain liable for full CIMA fees pending the approval of the de-registration by CIMA. The fund will be de-registered when all documents have been submitted, prescribed fees have been paid and there are no outstanding queries or regulatory filings with CIMA.

The Procedures do not commit CIMA to a timeframe within which de-registrations are processed; however, operators should expect a timeframe of at least 3 – 6 months from the filing of all required documentation.

After de-registration

Fund operators should be aware that there are a number of steps, in addition to de-registration, that need to be taken prior to completing the liquidation/dissolution of a Cayman Islands fund. These will include:

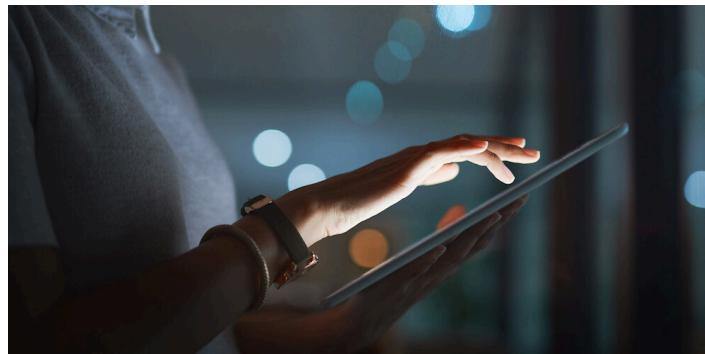
- filing a final FATCA return with the Cayman Islands Department for International Tax Cooperation (DITC);
- submitting a final return, a filing declaration and a compliance form with the DITC for CRS purposes;
- ensuring it is up to date with the filing of its economic substance exemption notices;
- submitting a notification to deactivate its registration on the DITC portal; and
- cancelling its registration with the US Internal Revenue Service.

Please feel free to reach out to your usual Carey Olsen contact or a member of our team listed on this page to discuss further.

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