

## Cayman Islands funds - governance update

**Briefing Summary:** The Cayman Islands Monetary Authority (CIMA) has recently published new and updated rules and statements of guidance relating to the governance of regulated entities.

**Service Area:** Investment Funds, Investment Managers, Fund Regulation and Compliance, Funds Strategies and Asset Classes

**Location:** Cayman Islands

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Those that apply to regulated Cayman Islands investment funds (both mutual funds and private funds) are:

- Rule on Corporate Governance for Regulated Entities (**Governance Rule**)
- Statement of Guidance on Corporate Governance – Mutual Funds and Private Funds (**Governance Guidance**)
- Rule and Statement of Guidance on Internal Controls for Regulated Entities (**Internal Controls Rule**)
- Statement of Guidance on the Nature, Accessibility and Retention of Records (**Records Guidance**)

The aim of the new rules and guidance is to provide a consistent and enforceable governance regime for all regulated Cayman Islands entities, while eliminating some of the gaps in the current regime. In particular, by extending the governance regime to private funds. Critically, the rules are more prudential than prescriptive in nature, requiring funds to have governance structures appropriate to their size, nature and complexity rather than complying with a one-size-fits-all approach.

The Governance Rule and the Internal Controls Rule, both of which come into force in October 2023, create an enforceable framework of governance rules applicable to all regulated entities, with CIMA able to impose administrative penalties for breaches. The provisions in these two rules that are applicable to investment funds largely overlap and must be read in conjunction with the Governance Guidance. This guidance helpfully interprets the rules in the context of investment funds, which differ from most other types of regulated entity in generally being unstaffed and outsourcing substantially all their functions to third parties.

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The governance regime is focussed on fund operators, which means the fund's board of directors or managers, general partner or trustee, as applicable. The key areas covered by the regime are:

- Operator composition/meetings
  - Appropriate number of individuals
  - Appropriate diversity of skills and experience
  - Appropriate meeting frequency/at least one a year
  - Keep proper written records of meetings/decisions
- Operator responsibilities
  - Establishing and maintaining an effective internal controls system
  - Ultimate oversight of outsourced functions
  - Monitor service providers and fund legal and regulatory compliance
  - Oversight of fund risks / management, monitoring and documentation of risks
- Operator conduct
  - Act honestly and in good faith with reasonable care, skill and diligence
  - Adopt a written conflicts of interest policy and disclose, monitor and manage conflicts
  - Exercise independent judgment in the best interests of the fund and investors as a whole
  - Communicate material changes to investors
  - Communicate in a transparent, clear and timely manner with CIMA

Operators of regulated Cayman Islands funds should review their current governance practices and procedures to ensure they comply with CIMA's minimum expectations before the new rules come into force in October.

All of CIMA's rules and statements of guidance relevant to regulated Cayman Islands funds can be viewed on CIMA's website.

Carey Olsen's team of professionals has extensive experience advising regulated funds on governance matters, so please reach out to your usual Carey Olsen contact for further advice and assistance in implementing or interpreting the new rules.

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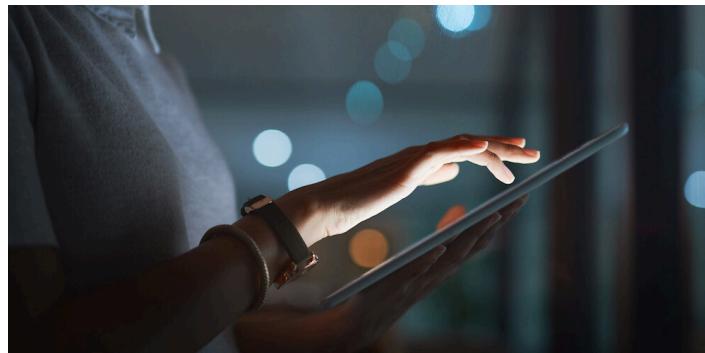
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