

Amendment to Cayman Islands Private Funds Law and fund finance considerations

Service area / [Investment Funds](#)

Legal jurisdiction / [Cayman Islands](#)

Date / [July 2020](#)

In February of this year, the Cayman Islands enacted the Private Funds Law (the “**Law**”) creating a regulatory framework for Cayman Islands closed ended fund structures for the first time. The Law mandates, among other things, that in order to accept capital contributions from investors for the purposes of investment, a “private fund” (as defined in the Law) must register with the Cayman Islands Monetary Authority (“**CIMA**”) by 7 August 2020 (the “**Deadline**”). The Law has now been amended such that various entities that previously fell outside the definition of a private fund (and thus the ambit of the Law entirely), are now within scope.

Highlights of changes made

In particular the following changes are of note:

- the requirement that a private fund should have, as its “*principal business*” the “*offering and issuing*” of its investment interests, has been replaced with the requirement that it now need only offer or issue, or have issued such interests;
- a private fund no longer needs to be separately managed “*for reward based on the assets, profits or gains*” of the fund; and
- the Law no longer defines a private fund as involving the “*spreading of investment risks*”.

As a result, various classes of entity, including AIVs, non-fee paying structures (such as co-invest and friends and family vehicles), and single investment funds, may now constitute

private funds and thus be required to register with CIMA over the course of the next month or so.

Fund finance considerations

In addition to a private fund’s obligations to CIMA, consideration should also be given in each case to the amendment’s impact, if any, on such fund’s financing arrangements. As a general matter, such arrangements should fall into three groups:

- *Facilities without specific provision for the Law*: In these cases the compliance with law covenant is likely to be of most relevance. Largely, this will simply amount to a contractual requirement that relevant entities register by the Deadline. Indeed, even thereafter, the covenant is often likely to be subject to a material adverse effect qualifier and/or a cure period.
- *Facilities with specific provision for the Law but where no Cayman Islands entities have been deemed out of scope*: In these cases, the amendment should have no immediate impact, and no doubt funds are progressing or have progressed their registration process as previously envisaged.
- *Facilities with specific provision for the Law where one or more Cayman Islands entities have been deemed out of scope*: In these instances, both lenders, funds, and their counsel would be advised to re-run such analysis to determine whether or not the original conclusion of non-applicability remains accurate. To the extent that it does not,

OFFSHORE LAW SPECIALISTS

an application for registration should be progressed as necessary to avoid any administrative breaches under the finance documents, particularly as many covenants specific to the Law that have been included will require certain steps to have been taken in advance of the Deadline.

Should further detail on the above be required, please reach out to your usual Carey Olsen contact.



FIND US

Carey Olsen
PO Box 10008
Willow House
Cricket Square
Grand Cayman KY1-1001
Cayman Islands

T +1 345 749 2000

E cayman@careyolsen.com



FOLLOW US

Visit our investment funds team at careyolsen.com



PLEASE NOTE

'Carey Olsen' in the Cayman Islands is the business name of Carey Olsen Cayman Limited, a body corporate recognised under the Legal Practitioners (Incorporated Practice) Regulations (as revised). The use of the title 'Partner' is merely to denote seniority. Services are provided on the basis of our current terms of business, which can be viewed at www.careyolsen.com/sites/default/files/TermsOfBusiness.pdf

CO Services Cayman Limited is regulated by the Cayman Islands Monetary Authority as the holder of a corporate services licence (No. 624643) under the Companies Management Law (as revised).

This briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen 2020.