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Regulation of s4(4) Exempted Cayman Funds

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The Cayman Islands Mutual Funds (Amendment) Law 2020 (the “**Amendment**”) came into force on 7 February 2020 and requires that s4(4) exempted Cayman funds apply to the Cayman Islands Monetary Authority (“**CIMA**”) for registration and as part of that registration process file details of their constitutional documents, pay an annual fee to CIMA and have their accounts audited by a CIMA approved auditor. Once registered those funds will be subject to ongoing requirements and regulatory supervision by CIMA.

Who is Affected by the Amendment?

The Amendment applies to any existing Cayman open ended fund which:

- ▣ has no more than 15 investors, a majority of whom are able to appoint or remove the fund’s operators (being its directors, general partners, trustees or managers); and
- ▣ is currently taking advantage of the exemption from the requirement to register with CIMA under s4(4) of the Mutual Funds Law (Revised) (the “**Law**”).

It will also apply to any new Cayman funds that wish to take advantage of any benefits of registration under s4(4) of the Law as compared to the current registration under s4(3) Law. What these benefits might be will depend on:

- ▣ the level of the registration fees to be charged by CIMA;
- ▣ the level of the annual fees to be charged by CIMA;

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- ▣ whether CIMA will impose any filing or other requirements on the offering documents of s4(4) registered funds;
- ▣ whether any requirements are imposed to appoint more than one director or manager for a corporate fund;
- ▣ whether any requirements are imposed to appoint CIMA registered directors; and/or
- ▣ whether any requirements are imposed to appoint an administrator for s4(4) registered funds.

The Amendment allows CIMA to grant exemptions from the requirements for registration, payment of fees and filing of documents and information but provides no guidance on the circumstances in which those exemptions might be given.

The Amendment has a wider application to existing registered funds in its requirement for the preparation of accounts and audits in accordance with specified standards.

The Registration Requirement

A Cayman fund wishing to take advantage of a registration under s4(4) of the Law will need to:

- ▣ file a certified copy extract of its constitutional documents specifying that a majority in number of its investors are capable of appointing or removing its operators;
- ▣ file any other information prescribed with CIMA;
- ▣ apply to be registered with CIMA; and
- ▣ pay a prescribed registration fee to CIMA.

Ongoing Requirements

Following its registration under s4(4) of the Law a fund will need to comply with the following ongoing obligations:

- ▣ pay a prescribed annual fee to CIMA on or before 15 January in each year;
- ▣ have its accounts prepared in accordance with US, Japanese or Swiss GAAP, IFRS or generally accepted accounting principles of a non-high risk jurisdiction;
- ▣ have its accounts audited annually by a CIMA approved auditor in accordance with International Standards on Auditing or generally accepted auditing standards of a non-high risk jurisdiction; and
- ▣ file its audited accounts with CIMA within six months of the end of its financial year.

A non-high risk jurisdiction is defined as any jurisdiction that is not on the list of high risk jurisdictions issued by the Financial Action Task Force.

The above ongoing requirements for the preparation of accounts and the application of audit standards will apply to all CIMA registered funds.

Oversight and Enforcement

CIMA will have the same regulatory powers in respect of s4(4) registered funds as it has over existing registered funds including:

- ▣ power to examine the affairs or business of the fund for the purpose of satisfying itself that the Law, the Proceeds of Crime Law (Revised) and the regulations made thereunder are being complied with;
- ▣ the imposition of conditions on registration
- ▣ the replacement any promoter or operator;
- ▣ the appointment of an advisor or controller of the fund; and
- ▣ to ability to apply to the Cayman Grand Court for orders to protect the interests of investors or creditors.

The auditor of a s4(4) registered fund will have the same supervisory obligations as an auditor of an existing registered fund.

Transitional Provisions

Funds that are carrying on business under s4(4) of the Law immediately before 7 February 2020 will have at least six months within which to comply with the new registration requirements.

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