23 NOVEMBER, 2020

Private Funds Law, 2020 (as amended) Non-Fund Arrangements – CIMA Statement of Guidance

The Private Funds Law, 2020 ("PFL") came into force on 7th February, 2020. The PFL requires that certain collective investment scheme arrangements, previously unregulated in the Cayman Islands, register with, and be regulated by, the Cayman Islands Monetary Authority ("CIMA") as a "private fund". The definition of "private fund" in the PFL excludes *inter alia* "non-fund arrangements". The Schedule to the PFL lists the types of arrangements that are to be regarded as "non-fund arrangements" for this purpose and the power was reserved to CIMA to issue rules and guidance² in relation to its approach in assessing whether a particular type of arrangement is to be regarded as a "non-fund arrangement".

On November 18th, 2020, CIMA issued a "Statement of Guidance: Non-Fund Arrangements" (the "Guidance"). Statements of Guidance are issued by CIMA on a range of topics from time to time and are intended to assist persons regulated by CIMA to comply with relevant laws, regulations, rules and statements of principles or to describe standards for conduct of business. The issue of the Guidance followed a period of consultation with industry groups and the adoption, in certain instances, of revisions to the original draft issued by CIMA. The end result is that the Guidance sets out CIMA's view of the assessment criteria to be applied in determining whether a certain arrangement is determined to be a non-fund arrangement with the result that the arrangement is exempt from the requirement for registration as a private fund under the PFL.

For further information on any of the issues discussed in this article please contact:



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¹ Private Funds Law, 2020 (as amended), section 2

 $^{^{2}}$ Issued by CIMA pursuant to section 34 of the Monetary Authority Law (2020 Revision) (as amended)

The full list of non-fund arrangements contained in the Schedule to the PFL is set out in the footnotes³, in relation to certain of these arrangements we would note that the Guidance sets the following requirements or features in order to qualify:

Joint Ventures

Involves two or more persons in an arrangement for commercial purposes related to a non-fund business carried on by the participants in the arrangement.

Proprietary Vehicles

An arrangement solely comprised of, and the investors and contributions in and to which are limited to, the promoters, operators and certain principals, owners or stakeholders in the arrangement.

Employee compensation schemes

These are arrangements designed to enable profits from a business to be used to purchase securities held on behalf of employees, for example share option arrangements.

Holding Vehicles

Any arrangement that holds interests or assets the commercial purpose of which is to carry out a business strategy through subsidiaries and which is a vehicle owned by a single investor operating on its own account or not established for the purposes of generating returns by means of divestment of the subsidiary entities.

Individual Investment Management Arrangements

An arrangement without any features of pooling (capital, risk or return) involving the management of an investment portfolio on a client-by-client basis

<u>Debt Issues and Debit Issuing Vehicle</u>

Where only debt or debt related instruments are issued the issuer is generally not regarded as having issued' investment interests' and thus not a private fund under the PFL.

Single Family Offices

The legal entity or arrangement formed in the Cayman Islands by a single family as the wealth management vehicle for that family.

³ pension funds; securitisation special purpose vehicles; contracts of insurance; joint ventures; proprietary vehicles; officer, manager or employee incentive, participation or compensation schemes, and programmes or schemes to similar effect; holding vehicles; individual investment management arrangements; pure deposit-based schemes; arrangements not operated by way of business; debt issues and debt issuing vehicles; common accounts; franchise arrangements; timeshare and long-term holiday product schemes; schemes involving the issue of certificates representing investments; clearing services; settlement services; funeral plan contracts; individual pension accounts; structured finance vehicles; preferred equity financing vehicles; a f und of whose investment interests are listed on a stock exchange (including an over-the-counter-market) specified by CIMA by notice in the Gazette; occupation and personal pension schemes; sovereign wealth funds; and single family offices.

Please contact us if you would like further information about the content of this briefing.



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