

Article

Borrowers Experience Speed Bump in Road to Compliance - The Expanded Scope of the Cayman Private Funds Law

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By now most fund finance professionals would likely choose an afternoon in the dentist's chair over a discussion about the Cayman Islands Private Funds Law, 2020 (the "PF Law"). Borrowers unfortunately experienced a speed bump in the road to compliance this week with the introduction by the Cayman Islands Government of an amendment to the PF Law (the "July Amendment") which significantly increases the number of entities which will need to register with the Cayman Islands Monetary Authority (CIMA) by 7 August 2020.

What does the July Amendment mean?

From a lender perspective the important points of note are as follows:

- The July Amendment is in force with effect from 7 July 2020 and entities which are newly in scope of the PF Law will have until 7 August 2020 to register with CIMA;
- The existing analysis of a lender's ability to immediately enforce capital call security over in-scope Cayman entities post-7 August 2020 does not change, but the number of such entities to which the analysis applies increases;
- The following types of Cayman entities which were, up until the July Amendment, outside of scope of the PF Law (and not required to register with CIMA) may now fall within scope of the PF Law and will be required to register with CIMA:
 - (i) most alternative investment vehicles (AIVs) formed in the Cayman Islands;
 - (ii) funds which hold only one asset or investment;
 - (iii) funds whose interests were not 'offered'; and
 - (iv) some master fund arrangements.
- Single investor entities or 'funds of one' are not within scope of the PF Law and do not need to register with CIMA. The July Amendment does not change this position.

What actions should a lender take?

In short, lenders should continue with whatever analysis or compliance process they have been undertaking or planned (see our previous note on this exercise [here](#)), except now in the knowledge that the scope of the PF Law has been expanded and, accordingly, they can anticipate more Cayman funds registering than may previously have been the case.

In addition, lenders should:

- (a) re-engage with sponsors who have previously advised that certain of their borrower entities were not within scope of the PF Law to ascertain whether this position has changed; and
- (b) be aware that in the case of credit agreements negotiated over the late spring and summer of 2020 the PF Law provisions added to these agreements may, depending on the drafting in each case, apply to these newly in-scope entities.

In response to a frequently received lender query, the mere fact of the failure of a newly in-scope Cayman vehicle (e.g. AIV) to become registered by 7 August 2020 will not restrict the ability of a lender to enforce security grants from other parties to such facility (e.g. the lender would still remain in a position to call capital from other funds that have granted security to support the facility).

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