

Article

The Private Funds Law and the Cayman Islands' Status with the EU

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In February 2020 the EU included the Cayman Islands on its Annex 1 list of non-cooperative jurisdictions for tax purposes; the so-called “black list”. Whilst the Cayman Islands Government had endeavoured to address the EU’s concerns in respect of the regulation of collective investment vehicles through the passing of The Private Funds Law (the “PFL”) and The Mutual Funds (Amendment) Law on 31 January 2020, the laws were only enacted on 7 February.

The EU’s Code of Conduct Group met on 4 February to give guidance to the EU Finance Ministers on the preparation of the black list and advised that the Cayman Islands did not deliver on their commitment on time. Accordingly, it appears that the listing was due to an unfortunate technical timing breach and the Cayman Islands Government has been liaising with EU officials to begin the process of being removed from the black list as soon as possible, which is anticipated to be October 2020.

In a continuation of the effort to take the Cayman Islands off the EU blacklist, the Government introduced recent changes to the Private Funds Law, in the Private Funds (Amendment) Law, 2020 which came into effect on 7 July 2020 (the “Amendment Law”). The Amendment Law both clarifies the position of what can be defined as a private fund for certain types of entities outlined in the previous version of the PFL and extends the scope of the PFL to additional entities. This clarification and extension may have changed the status of a number of entities, including but not limited to certain master funds, certain alternative investment vehicles and funds formed for a single investment.

In order to comply with the PFL, all entities (including those caught by these changes to the definition of a private fund) which qualify as private funds will need to register with Cayman Islands Monetary Authority (CIMA) by 7 August 2020. Very significant work has been on-going all summer with bulk filings occurring, and local industry players are confident that the filings will be made on time.

What is a Private Fund?

For the purposes of the PF Law, Private Funds are defined as any company, unit trust or partnership that offers or issues or has issued its non-redeemable investment interests, the purpose or effect of which is the pooling of investor funds with the aim of enabling investors to receive profits or gains from such entity’s acquisition, holding, management or disposal of investments, where:

- (a) the holders of investment interests do not have day-to-day control over the acquisition, holding, management or disposal of the investments; and
- (b) the investments are managed as a whole by or on behalf of the operator of the private fund directly or indirectly.

Excluded from the definition of private fund are persons licensed under the Insurance Law or the Banks and Trust Companies Law; persons registered under the Building Societies Law or Friendly Societies Law and a list of business activities described as “non-fund arrangements”.

How does it affect you?

The PFL does not directly affect insurers, insurance managers or other stakeholders in the Cayman Islands (re)insurance industry. However, the introduction and implementation of the PFL is crucial in terms of ensuring the removal of the Cayman Islands from the EU blacklist which is in the interests of all parties with a Cayman Islands nexus.

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