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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council

To: Code of Conduct Group (Business Taxation)

Subject: The EU list of non-cooperative jurisdictions for tax purposes

- Cayman Islands: final legislation and assessment under criterion 2.2
- = Regulatory Policy on Exemption from Valuation Requirement for a Private Fund



REGULATORY POLICY

Exemption from Valuation Requirement for a Private Fund

September 2020

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List of Acronyms

CIMA	Cayman Islands Monetary Authority
MAL	Monetary Authority Law
PFL	Private Funds Law

Regulatory Policy

Exemption from Valuation Requirement for a Private Fund

1. Introduction

- 1.1 This document establishes the **Cayman Islands Monetary Authority's** (the "**Authority**" or "**CIMA**") *Regulatory Policy on Exemption from Valuation Requirement for a Private Fund* ("**the Policy**") as contemplated in section 16(7) of the Private Funds Law, 2020 (as amended) ("**the Law**"). The Policy should be read in conjunction with the following:
- a) The Law;
 - b) The Monetary Authority Law, 2020 (as amended) ("**the MAL**")
 - c) The Private Funds (Savings and Transitional Provisions) Regulations, 2020 ("**the Regulations**");
 - d) The Private Funds (Fees) Regulations, 2020;
 - e) The Private Funds Regulations; and
 - f) Any other relevant laws and regulatory instruments issued by the Authority from time to time.
- 1.2 **Section 16(7) of the Law states:** *"The Authority may exempt a private fund from the requirements of this section either absolutely or subject to such conditions as the Authority may deem appropriate."*

2. Statutory Authority

- 2.1 The Policy is being issued by the Authority in accordance with its power to do so under section 48 of the MAL which provides that the Authority may amend the Regulatory Handbook:
- "(1) The board shall issue, and may amend, a regulatory handbook setting out, as far as is practicable, the policies and procedures to be followed by the Authority, its committees and its officers in performing the Authority's regulatory functions and co-operative functions."*

3. Statement of Objectives

- 3.1 This Policy establishes the **Authority's** approach on assessing whether a request for exemption from the requirements for valuation of a private fund is deemed appropriate pursuant to section 16 of the Law.
- 3.2 The measure **is consistent with the Authority's statutory objectives** as prescribed in the MAL, including:

- (a) promoting and maintaining a sound financial system in the Islands;
- (b) having regard to generally accepted principles of good corporate governance;
- (c) endeavouring to promote and enhance market confidence, consumer protection and the reputation of the Islands as a financial centre;
- (d) facilitating innovation in financial services business;
- (e) recognising the need for transparency and fairness on the part of the Authority; and
- (f) recognising the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, from the point of view of both consumers and suppliers of financial services, while conforming to internationally applied standards insofar as they are relevant and appropriate to the circumstances of the Islands.

4. Scope of Application

- 4.1 The measure will be used to assess whether a registered private fund operating in or from the Cayman Islands may be granted an exemption from the valuation requirements established in section 16 of the Law.
- 4.2 This Policy applies to all circumstances where an exemption from valuation may be considered. Notwithstanding, the Authority expects all private funds to comply with the requirement to obtain valuations as stipulated under section 16 of the Law. Consequently, consideration for approval of valuation exemptions will be given under exceptional circumstances only.

5. Definitions

- 5.1 For the purpose of this Policy, the definitions below are provided.
 - 5.1.1 **"Compulsory liquidation"** means involuntary official liquidation.
 - 5.1.2 **"Launched"** refers to a situation where a fund has accepted capital commitments from investors for the purpose of investments.
 - 5.1.3 **"Private Fund"** carries the meaning ascribed in the Private Funds Law (as amended).

6. Valuation Exemptions

The Authority will use the following exhaustive criteria to determine whether to grant an absolute or a conditional valuation exemption.

*In the case of an **absolute exemption**, the exemption will relate to all requirements established for valuations; and the period of the exemption will be for a period not exceeding one year.*

Where a **conditional exemption** is granted, in all cases, the exemption will be for a fixed period not exceeding one year and issued in respect of one or more of the requirements for valuation stipulated in section 16 of the Law.

Absolute Exemptions

- 6.1 The Authority will consider an absolute exemption from the valuation requirements set out in section 16 of the Law in the following circumstances only:
 - 6.1.1 where a Cayman Islands court has frozen the assets of the fund. In such a case the exemption from valuation will be for the period during which the funds are kept frozen as stipulated by the courts; or
 - 6.1.2 where, as part of a Mutual Legal Assistance Treaty, there is agreement by the Cayman Islands to repatriate the proceeds of the private fund.

Conditional Exemptions

- 6.2 The Authority may consider an exemption from valuation of a private fund for any of the valuation requirements set out in the Law, for a period not exceeding one year, in the following circumstances only:
 - 6.2.1 a fund has not launched but does not wish to be deregistered;
 - 6.2.2 a fund has not launched and wishes to be deregistered;
 - 6.2.3 a fund is unable to complete a valuation due to events such as bankruptcy proceedings, legal or regulatory enforcement actions related to the fund or to a significant underlying investment position of that fund; or
 - 6.2.4 a fund has been placed in compulsory liquidation by order of a court of a competent jurisdiction and the Authority is satisfied with the appointment of the liquidator and the scope of the liquidator's review.
- 6.3 A private fund may submit a request for a conditional exemption from the requirements set out in section 16 of the Law for a period of not more than one year, once all of the following conditions are met:
 - 6.3.1 the request for valuation exemption is in accordance with the fund's constitutive documents;
 - 6.3.2 the fund operator has communicated its intention to apply for an exemption to all investors in the fund;
 - 6.3.3 **the fund's constitutive documents** are amended to clearly articulate absolute restrictions on (1) any new investors participating in the fund

and (2) the ability of investors to increase, decrease or modify in any way, their investment interest in the fund;

- 6.3.4 acknowledgement by the fund that it waives its rights to request an exemption from the annual audit requirements pursuant to section 13(6) of the Law; and
- 6.3.5 the valuation completed immediately following the period of exemption and the valuation upon which the subsequent audited financial statements are based are performed by an appropriately professionally qualified independent third party.

7. Approval of Valuation Exemptions

- 7.1 If a private fund meets the criteria as set out in section 6 above, an application for an exemption from the valuation requirement/s, as prescribed by the Law, may be submitted to the Authority for approval. The decision to grant any exemptions to the valuation requirement/s to a private fund that meets the relevant criteria as set out in section 6 is at the sole discretion of the Authority. The Authority will not grant any exemption from the valuation requirement/s unless the relevant criteria set out in section 6 are satisfied.
- 7.2 In determining whether an exemption should be granted, the Authority shall **assess each fund's circumstances on a case by case basis, to determine** whether the exemption from valuation requirements is deemed appropriate.
- 7.3 In considering whether to exempt a fund from the valuation requirements, the Authority will assess whether the fund and its operators are in full compliance with all aspects of the Law and other regulatory obligations and meet any other conditions as CIMA may require. As part of this assessment, the Authority will consider whether the following criteria are met:
 - a) the fund is in good standing, including completed the timely filing of regulatory reports, submission of prudential returns, completion and submission of unqualified annual audit reports and payment of fees;
 - b) the fund and its operators are not subject to any litigation proceedings;
 - c) the Authority has found the fund to be in full compliance with its anti-money laundering and counter terrorism and proliferation financing obligations in the current valuation period and the period immediately preceding and/or where the Authority has determined that there are no concerns with the **fund's framework to manage** money laundering, terrorism financing and proliferation financing risks; and
 - d) the Authority is satisfied with the operation of the fund.
- 7.4 In considering whether to exempt a fund from the valuation requirements, the Authority must be satisfied that the exemption will not contravene any terms **of the fund's articles or other constitutive documents and its marketing materials**, or prejudice the **fund's investors and/or** creditors. In addition to the

documents to be provided pursuant to section 8 below, an operator of the fund should provide written confirmation of the absence of such contravention.

- 7.5 Where a fund applies for an exemption for two consecutive valuation periods, the Authority may request **additional information from the fund's operator or administrator detailing the reasons for the fund's inability to complete the valuation.**

8. Required Documentation

Paragraphs 8.1 to 8.5 outline the relevant information and documents that should be submitted to the Authority in support of an application for an exemption from the valuation requirements set out in the Law.

- 8.1 All requests for a valuation exemption should be accompanied by an **explanation of the reason for the fund's inability to complete the valuation** and the associated material risks. Evidence of notification provided to **the fund's** investors of the request for exemption should also be provided to CIMA.
- 8.2 Where a request for an exemption is based on the criteria set in 6.3 above, the Authority requires the submission of:
- (a) amended constitutive documents to support 6.3.3 above; and
 - (b) an affidavit from the operator of the fund confirming the requirements set out in 6.3.1, 6.3.2, 6.3.4 and 6.3.5 above.
- 8.3 Where a fund has not launched but does not wish to be deregistered, the Authority requires the submission of an affidavit from an operator of the fund:
- (a) explaining the reason for the fund not being launched;
 - (b) explaining the reason for the fund not wishing to be deregistered; and
 - (c) confirming that the fund has not received capital commitments from investors.
- 8.4 Where a fund has not launched and wishes to be de-registered, the following should be submitted:
- (a) an affidavit from an operator of the fund confirming and explaining the reason why the fund has never carried on business as a private fund; and
 - (b) written confirmation from the fund's administrator, registrar or transfer agent, that no capital commitments have been accepted from investors.**
- 8.5 Where a fund is unable to complete a valuation due to events such as bankruptcy proceedings, legal or regulatory enforcement actions, or where the fund has been placed in compulsory liquidation, the Authority will receive the official reports as produced by the relevant authority in lieu of the required valuation from the fund.

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- 8.6 In such cases where affidavits are submitted, the Authority will satisfy itself as to whether the contents therein are sufficient. The Authority may require additional evidence to be provided.
- 8.7 The application fee prescribed in the MAL is payable upon submission of an application for the exemption.