

## Alert

### Cayman Islands Private Funds Law – Change to Definition of “Private Fund”

The Private Funds (Amendment) Law, 2020 (the “Amendment Law”) came into effect on 7 July 2020 and serves to clarify the types of investment vehicles which will be required to register with the Cayman Islands Monetary Authority (CIMA) by a deadline of 7 August 2020 pursuant to the Private Funds Law (2020 Revision) (the “PFL”).

#### The new definition of “private fund”

The definition of “private fund” has been revised to mean a company, unit trust or partnership that offers or issues or has issued 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.

Certain licensed<sup>1</sup> or registered<sup>2</sup> entities and a specified list of “non-fund arrangements” are excluded from the definition. The list of non-fund arrangements has not been amended and includes, amongst other things, securitisation SPVs, joint ventures, officer, manager or employee incentive schemes, holding vehicles, individual investment management arrangements, debt issues and debt issuing vehicles, structured finance vehicles, sovereign wealth funds and single family offices.

#### Effect of the change in definition

Certain entities which have taken the view that they were not required to register pursuant to the original definition of “private fund” may need to reconsider whether they are within the scope of the PFL based on the new broader definition. Entities which may now be required to register with CIMA by 7 August 2020 include:

- funds formed to hold only a single investment;
- funds whose operator does not charge fees or where fees are unrelated to the assets, profits or gains of the entity;
- certain master fund structures; and
- certain alternative investment vehicles (AIVs).

#### Other changes introduced

The Amendment Law also removes the ability for Cabinet to make regulations exempting any person or class of persons or business or class of business from the provisions of the PFL and introduces a requirement that in relation to potential conflicts of interest arising in relation to asset valuations, safekeeping of fund assets and cash monitoring that they be managed and monitored.

Please contact your usual Conyers contact or one of the contacts listed below for assistance.

<sup>1</sup> Persons licensed under the Banks and Trust Companies Law (2020 Revision) or the Insurance Law, 2010.

<sup>2</sup> Persons registered under the Building Societies Law (2020 Revision) or the Friendly Societies Law (1998 Revision).

### Cayman Contacts:

**Alan Dickson**  
Partner, Cayman Islands  
alan.dickson@conyers.com  
+1 345 814 7790

**Craig T. Fulton**  
Partner, Cayman Islands  
craig.fulton@conyers.com  
+1 345 814 7372

**Nicholas Pattman**  
Partner, Cayman Islands  
nicholas.pattman@conyers.com  
+1 345 814 7765

### Global Contacts:

**Piers Alexander**  
Partner, Hong Kong  
piers.alexander@conyers.com  
+852 2842 9525

**Linda Martin**  
Director, Head of London Office  
linda.Martin@conyers.com  
+44 (0) 20 7562 0353

**Janice Oh**  
Director, Singapore  
janice.oh@conyers.com  
+65 6603 0703

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For further information please contact: [media@conyers.com](mailto:media@conyers.com)