



# **STATEMENT OF GUIDANCE:** **Non-Fund Arrangements**

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## List of Acronyms

<b>CIMA</b>	Cayman Islands Monetary Authority
<b>MAL</b>	Monetary Authority Law
<b>PFL</b>	Private Funds Law
<b>SoG</b>	Statement of Guidance
<b>SWF</b>	Sovereign Wealth Fund



## **Statement of Guidance: Non-Fund Arrangements**

### **1. Introduction**

- 1.1 This document establishes the Cayman Islands Monetary Authority's (the "Authority" or "CIMA") *Statement of Guidance on Non-Fund Arrangements* ("SoG") as contemplated by the Schedule to the Private Funds Law, 2020. The SoG should be read in conjunction with the following:
- a) The Private Funds Law ("the PFL" or "the Law");
  - b) The Private Funds (Savings and Transitional Provisions) Regulations, 2020;
  - c) The Private Funds Regulations, 2020;
  - d) The Mutual Funds Law (2020 Revision);
  - e) The Securities Investment Business Law (2020 Revision); and
  - f) Any other relevant laws and regulatory instruments issued by the Authority from time to time.

### **2. Statutory Authority**

- 2.1 This SoG is being issued by the Authority in accordance with its power to do so under section 34 of the Monetary Authority Law (2020 Revision) ("the MAL") which provides that the Authority may issue rules, statements of principles or guidance:

*"(1) After private sector consultation and consultation with the Minister charged with responsibility for Financial Services, the Authority may–*

- (a) issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees and any other persons to whom and to the extent that the regulatory laws may apply; ..."*

### **3. Statement of Objectives**

- 3.1 This SoG provides the Authority's guidance on assessing whether certain arrangements, as outlined in the Schedule to the PFL are determined to be a non-fund arrangement. Meeting the definition of a non-fund arrangement exempts that arrangement from the need for registration by the Authority as stipulated in section 5 of the PFL.
- 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; and
  - b) facilitating innovation in financial services business.

### **4. Scope of Application**

- 4.1 The Authority will apply this SoG and the requirements of the Law in assessing entities seeking to register or who are registered to conduct the business of a private fund in or from the Cayman Islands.

- 4.2 The measure will be used to determine whether an arrangement operating in or from the Cayman Islands falls within the scope of the PFL and is therefore required to be registered by the Authority; or whether that arrangement is considered a non-fund arrangement as prescribed in the Schedule to the Law and is therefore not required to be registered as a private fund under the Law.

## 5. Definitions

- 5.1 The following definitions are provided for the purpose of this Rule:
- 5.1.1 **"Arrangement"** includes an agreement, contract, vehicle, venture, scheme, plan, programme, organisation, office, or other form of collaborative effort between or among persons or entities.
  - 5.1.2 **"Operator"** has the same meaning as that prescribed in the Private Funds Law.
  - 5.1.3 **"Pension Fund"** has the same meaning as that prescribed in the National Pensions Law.
  - 5.1.4 **"Pension Plan"** has the same meaning as that described in the National Pensions Law.
  - 5.1.5 **"Private Fund"** has the same meaning as that prescribed in the Private Funds Law.
  - 5.1.6 **"Promoter"** has the same meaning as that prescribed in the Private Funds Law.
  - 5.1.7 **"Proprietary Investor"** has the same meaning as that prescribed in the Private Funds Law.

## 6. Non-Fund Arrangements

*The following arrangements, as defined in this SoG issued by the Authority under section 34 of the Monetary Authority Law (2020 Revision), constitute non-fund arrangements. Arrangements which meet any of the following definitions are non-fund arrangements and are not considered to be private funds within the meaning or contemplation of the definition of a "private fund" under section 2 of the PFL.*

### 6.1 Pension Funds

- 6.1.1 Pension fund has the same meaning as that prescribed in the National Pensions Law. This exemption also includes the Public Service Pensions **"Fund"** as defined under the Public Service Pensions Law.
- 6.1.2 An arrangement under which a right to benefits results from contributions made under an occupation or personal pension plan is a non-fund arrangement.

### 6.2 Securitisation Special Purpose Vehicles



6.2.1 A securitisation vehicle is a non-fund arrangement, as long as its sole purpose is to carry on:

- a) securitisation or securitisations; or
- b) other activities which are appropriate to accomplish that purpose.

### 6.3 ***Contract of Insurance***

6.3.1 Any contract of insurance which is a contract of long-term insurance or a contract of general insurance is a non-fund arrangement, and includes:

- a) fidelity bonds, performance bonds, administration bonds, bail bonds, customs bonds or similar contracts of guarantee, where these are —
  - i. effected or carried out by a person not carrying on a banking business;
  - ii. not effected merely incidentally to some other business carried on by the person effecting them; and
  - iii. effected in return for the payment of one or more premiums;
- b) tontines;
- c) capital redemption contracts or pension fund management contracts, where these are effected or carried out by a person who—
  - i. does not carry on a banking business; and
  - ii. otherwise carries on a regulated business involving effecting or carrying out a contract of insurance as a principal;
- d) contracts to pay annuities on human life;
- e) collective insurance contracts; and
- f) social insurance contracts.

but does not include a funeral plan contract.

### 6.4 ***Joint Ventures***

6.4.1 A joint venture refers to an arrangement into which two or more persons ("the participators") enter for commercial purposes related to a business or businesses (other than business regulated under the Law) carried on by the participators themselves and with capital invested from amongst themselves; where a participator is a member of a group, each other member of the group is also to be regarded as a participator in the arrangement.

### 6.5 ***Proprietary Vehicles***

6.5.1 A proprietary vehicle refers to an arrangement which is solely comprised of, and its investors limited only to, a promoter, operator and proprietary investors.

6.5.2 For an investor to be considered a proprietary investor under this exemption, the capital invested in the arrangement must be entirely proprietary capital.

### 6.6 ***Officer, manager or employee incentive, participation or***

**compensation schemes, and programmes or schemes to similar effect**

- 6.6.1 Arrangements that are designed to enable profits from a business to be used to purchase equity interests or other securities which are held on behalf of employees, former employees or another member of the same group or their spouses, close relatives and/or dependents are non-fund arrangements. Trustees of an employee's family trust may also participate. This covers most employee share option arrangements and other employee share incentivisation arrangements.
- 6.6.2 Arrangements in which an employee invests in securities of the employer or in a vehicle in the employer's group (or derivatives in relation to these, such as options) are non-fund arrangements.
- 6.6.3 Under this exemption, the term employee includes personnel who work in the business or formerly worked in the business of the undertaking concerned, contributing their skills and time.

**6.7 Holding Vehicles**

- 6.7.1 A holding vehicle includes any arrangement that holds interests in one or more other arrangement or assets, the commercial purpose of which is to carry out a business strategy or strategies through its subsidiaries, associated vehicles or participations in order to contribute to their long-term value, and which is a vehicle wholly owned by a single investor that is either:
- a) operating on its own account; or
  - b) not established for the main purpose of generating returns for its investors by means of divestment of its subsidiaries or associated vehicle, as evidenced in official documentation.
- 6.7.2 Generally, an arrangement will be considered a non-fund arrangement if:
- a) it carries out a commercial business strategy through its participations by contributing to their long-term value; and
  - b) it does not generate its returns for its investors by means of divestment of its participations.

**6.8 Individual Investment Management Arrangements**

- 6.8.1 The management of a portfolio of investments or other property on an individual client-by-client basis is a non-fund arrangement as long as, at a minimum there is no pooling<sup>1</sup> of capital, risk and return.
- 6.8.2 Where a client is a member of a group, each member of the group is to be regarded collectively as a single client.

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<sup>1</sup> Pooling for these purposes does not require that the underlying property is pooled.

## 6.9 **Pure Deposit-Based Schemes**

6.9.1 An arrangement is a non-fund arrangement if it is a pure deposit-based scheme, in the sense that the whole amount of each participant's contribution is a deposit which is accepted by a person authorised to accept deposits.

## 6.10 **Arrangements not Operated by way of Business**

6.10.1 Whether the arrangements in question are operated by way of business will depend on the facts in each case, the activity in question and the property or investment(s) concerned.

6.10.2 This exemption may include arrangements such as family trusts, family holding vehicles and a syndicate of private individuals involved in an investment club.

## 6.11 **Debt Issues and Debt Issuing Vehicles**

6.11.1 Arrangements that only issue debt or prescribed alternative financial instruments are generally not deemed to be issuing investment interests and therefore are non-fund arrangements.

6.11.2 The arrangements for an issue of debt securities by an ordinary commercial or financial company will generally not be considered a private fund or turn the issuer into one as long as the issuer does not invest the capital it raises for the benefit of the subscribers of the debt securities..

## 6.12 **Common Accounts**

6.12.1 An arrangement is a non-fund arrangement if:

- a) they are arrangements under which the rights or interests of participants are rights to or interests in money held in a common account; and
- b) that money is held in the account on the understanding that an amount representing the contribution of each participant is to be applied:
  - i. in making payments to that participant;
  - ii. in satisfaction of sums owed by that participant; or
  - iii. in the acquisition of property for him/her or the provision of services to that participant.

## 6.13 **Franchise Arrangements**

6.13.1 Franchise arrangements include any arrangement under which a person earns profits or income by exploiting a right conferred by the arrangement to use a trademark or design or other intellectual property or the good-will attached to it.

## 6.14 **Timeshare and long-term holiday product schemes**

6.14.1 An arrangement is a non-fund arrangement if the rights of the investors are rights under a timeshare contract or a long-term holiday product contract.

6.15 ***Schemes involving the issue of certificates representing investments***

6.15.1 An arrangement pursuant to which a certificate or other instrument confers contractual or property rights (other than rights consisting of options):

- a) in respect of any share, debenture, alternative debenture, government and public security or warrant held by a person other than the person on whom the rights are conferred by the certificate or instrument; and
- b) the transfer of which may be effected without requiring the consent of that person;

but excluding any certificate or other instrument which confers rights in respect of two or more investments issued by different persons or in respect of two or more different government and public securities issued by the same person, is a non-fund arrangement.

6.16 ***Clearing Services***

6.16.1 An arrangement is a non-fund arrangement if its purpose is the provision of clearing services and it is operated by an authorised person, a recognised clearing house or a recognised investment exchange.

6.16.2 Under this exemption, the arrangement provides a service to members of the clearing system in its role as central counterparty and not investing in the securities bought and sold for its benefit.

6.17 ***Settlement Services***

6.17.1 An arrangement is a non-fund arrangement if its purpose is the provision of settlement services and it is operated by an authorised person or a recognised central securities depository.

6.18 ***Funeral Plan Contracts***

6.18.1 A funeral plan contract includes an arrangement under which a person ("the customer") makes one or more payments to another person ("the provider"); and the provider undertakes to provide, or secure that another person provides, a funeral for the customer (or some other person who is living at the date when the contract is entered into) on his/her death unless, at the time of entering into the contract, the customer and the provider intend or expect the funeral to occur within one month; but excluding certain contracts under which sums paid will be applied towards a contract of insurance or will be held on trust.

6.19 ***Individual Pension Accounts***

## 6.20 **Structured Finance Vehicles**

6.20.1 Structured finance vehicles include arrangements that pool income producing assets and issue securities backed by those assets.

## 6.21 **Preferred Equity Financing Vehicles**

6.21.1 A preferred equity financing vehicle is an arrangement, which is not an operating entity, which issues preferred stock, preferred shares or other preferred equity instruments to investors, giving those investors a preference over ordinary or common shareholders or other ordinary or common equity holders.

6.21.2 The purpose of such an arrangement is the provision of financing to an operating entity. Any amounts attributed to common equity are inconsequential to the entity and the preferred equity instrument is typically structured to earn a fixed or market interest rate based return and/or upside economic returns through the issue of options or warrants in the operating entity that is the subject of the preferred equity financing vehicle.

6.22 ***A fund of whose investment interests are listed on a stock exchange (including an over-the-counter-market) specified by the Authority by notice in the Gazette.***

## 6.23 **Occupational and Personal Pension Scheme**

6.23.1 The exclusion of personal pension schemes from the scope of the Law does not extend to personal pension unit trusts which are constituted as feeder funds or comprises feeder funds.

## 6.24 **Sovereign Wealth Funds**

6.24.1 Sovereign wealth funds (SWF) refer to special purpose investment funds that are created and owned by the state/general government. SWFs are funded by state/government reserves but managed separately from official reserves and typically invested in a diversified portfolio of financial assets.

## 6.25 **Single Family Offices**

6.25.1 A single family office means a legal entity or legal arrangement formed in the Cayman Islands by a single family (to manage the wealth) for or on behalf of that single family.



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