

BULLETIN

CAYMAN ISLANDS - MUTUAL FUNDS: NEW OBLIGATIONS FOR MASTER FUNDS

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Changes to the Mutual Funds Law

In June 2011 the Cayman Islands government announced a proposal to amend the Mutual Funds Law ("2009 Revision") (the "Mutual Funds Law") to require Cayman Islands master funds that have regulated feeder funds as part of their structure to be subject to new registration and filing requirements. A draft bill containing these proposals was published on 20 October 2011. Following consultation by the Cayman Islands government and the Cayman Islands Monetary Authority ("CIMA") with industry experts a revised version of the bill (the "Bill") was passed by the Legislative Assembly of the Cayman Islands on 5 December 2011.

Cayman Islands Master Funds – A Favoured Structure

Master-feeder fund structures have long been favoured by fund managers as a means of implementing a tax effective structure for both taxable and tax-exempt investors. Most often the Cayman Islands, with its efficient regulatory regime and high quality service providers, is the neutral offshore jurisdiction of choice for establishment of a master fund and its offshore feeder fund. Although the precise figure is not known it is anticipated that there may be over 4,000 existing master funds which may be affected by the proposed regulations.

At present most types of Cayman Islands domiciled feeder funds that are regulated by the Mutual Funds Law do not require a mutual fund licence but are subject to registration and reporting requirements under Section 4(3) of the Mutual Funds Law and must pay annual fees to CIMA. However, the Mutual Funds Law does not currently impose specific requirements on Cayman Islands domiciled master funds and, since registration and reporting is not required by mutual funds with fifteen or fewer investors, the vast majority of Cayman Islands master funds are exempt from the existing registration and reporting process.

New Obligations for Master Funds

The Bill, which at the time of writing has not yet been officially published, amends the Mutual Funds Law so that:

- New registration requirements will apply to Cayman Islands incorporated or established master funds that have one or more Cayman Islands regulated feeder funds as part of their structure. These master funds will be required to provide CIMA with information in a form that will be prescribed by the regulatory authority;
- The new regime is not intended to apply to master funds established or incorporated outside the Cayman Islands, or to master funds without Cayman Islands regulated feeder

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funds, so master funds whose Cayman Islands feeder funds have no more than fifteen investors will not be caught by the new provisions. Additionally, closed ended funds, which are not subject to the Mutual Funds Law, will not be affected by these changes;

- Cayman Islands incorporated or established master funds that are caught by the changes to the Mutual Funds Law will be required to pay an annual registration fee of approximately \$3,030 USD to CIMA;
- Affected master funds will be required to provide CIMA with a copy of the fund's current offering memorandum, where such a memorandum exists, and otherwise will be required to file certain information in the prescribed form;
- Material changes to the prescribed information provided to CIMA or to the contents of any offering document will trigger a requirement on the master fund to resubmit the information to the regulatory authority within a statutorily prescribed period of time;

- Affected master funds will be required to have their accounts audited annually by a CIMA approved auditor;
- The amendments to the Mutual Funds Law mean that master funds will not be able to take advantage of the exemption from registration for mutual funds in which equity interests are held by not more than fifteen investors, although unregulated feeder funds will continue to benefit from this exemption; and
- Existing master funds that are affected by the legislative changes will not be grandfathered but will have 90 days to comply with these new requirements once they are passed into law. This period may be extended by regulations for a further period not exceeding sixty days.

Timelines and Updates

Once the Bill is published in the Cayman Islands Gazette it will become law. The next issue of the Cayman Islands Gazette is due to be published on Monday 19 December 2011.

The information contained in this bulletin is provided for the general interest of our readers, but is not intended to constitute legal advice. Clients and the general public are encouraged to seek specific advice on matters of concern. This guide can in no way serve as a substitute in such cases.