

OFFSHORE



Master fund registration in the Cayman Islands



By Grace Teo

The Mutual Funds (Amendment) Bill 2011 (the Amendment) came into effect on December 22, 2011 and brings into force an earlier proposal by the Cayman Islands Premier to require new and existing master funds in open ended master/feeder structures to register with the Cayman Islands Monetary Authority (CIMA) to bring the Cayman regime in line with the practice adopted in other jurisdictions.

Historically, although some master funds in open ended master/feeder structures were registered under the Mutual Funds Law (2009 Revision) (the MF Law), most have been structured in such a way as to ensure either that they do not constitute 'mutual funds' for the purposes of the MF Law or that they are able to avail themselves of an exemption from registration (i.e. the '15 investor exception'). The '15 investor exception' would be available to a master fund where the "equity interests are held by not more than 15 investors, a majority of whom are capable of appointing or removing the operator of the fund". A master fund's organisational documents would typically contain provisions to that effect and a disclosure regarding the master fund's absence of registration would be made in the corresponding feeder fund's offering document.

The Amendment applies to a "mutual fund that is incorporated or established in the Islands, that holds investments and conducts trading activities and has one or more regulated feeder funds".

In practice, this means that not all master funds established in the Cayman Islands will fall within the ambit of the Amendment. In essence, it will only capture Cayman master funds which (a) issue equity interests redeemable at the option of the investor(s), (b) have at least one investor and (c) have themselves one or more feeder funds which are in turn, registered with CIMA. Accordingly, closed-ended master funds whose equity interests are not redeemable at the investors' option and master funds that have only non-CIMA regulated feeder fund(s) are not subject to the Amendment. On February 15, 2012, the Cayman Islands Government issued an industry advisory clarifying that Cayman

master funds with only one CIMA-registered feeder fund (and no other investor) were intended to fall within the regulatory net and that it will put forward a further amendment, to become effective prior to the expiry of the March 21, 2012 grandfathering period, that will require such master funds to be registered.

Existing master funds already in existence as at December 22, 2011 and to which the Amendment applies have a period of 90 days (i.e. until March 21, 2012) to comply with the registration requirements set out in the Amendment. New master funds in open ended master/feeder structures are now required to register with CIMA pursuant to the Amendment.

A registered master fund will be required to comply with many of the same duties and obligations to which CIMA-registered hedge funds are already subject including (i) payment of an annual fee, and (ii) the requirement to file audited financial statements signed off by a Cayman-approved auditor and a Fund Annual Return (FAR) Form within six months of the financial year end (unless extended by CIMA).

There are however a number of significant concessions. The annual fee payable by a master fund is set at CI\$2,500 (US\$3,048), which is lower than the annual fees payable by other types of CIMA-registered funds. In addition, a master fund is not required to adopt or file an offering document although a new type of registration form (i.e. a Form MF4) will need to be filed with CIMA disclosing certain prescribed information. Furthermore, where the auditor and administrator of the master fund are the same as for the corresponding regulated feeder fund(s), no separate letters of consent will be required by CIMA.

The Amendment adds to the regulatory oversight provided by CIMA however as a purely administrative matter, it is not expected to have a significant impact on the Cayman Islands as the preferred domicile for hedge funds.

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