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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 Audit Requirement
for a Private Fund



REGULATORY POLICY

Exemption from Audit Requirement for a Private Fund

JULY 2020

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List of Acronyms

PF Private Fund

Regulatory Policy - Exemption from Audit Requirement for a Private Fund

1. Statement of Objectives

- 1.1. To set out conditions where the Authority may exempt a Private Fund ("PF") from audit requirements.

2. Scope of Application

- 2.1. This Policy is applicable to funds that are required to be audited under section 13(1) of the Private Funds Law (as amended).

3. Introduction

- 3.1. Pursuant to section 13(1) of the Private Funds Law ("the Law"), "a private fund shall have its accounts audited annually..."
- 3.2. Section 13(4) of the Law requires a fund to "send its audited accounts in respect of each financial year of the private fund to the Authority within six months of the end of that financial year or within such extension of that period as the Authority may allow"
- 3.3. Section 13(6) of the Law further provides that "The Authority may, in relation to the whole or part of any financial year of a private fund, exempt a private fund from the requirements of this section either absolutely or subject to such conditions as the Authority may deem appropriate."
- 3.4. This document establishes the Regulatory Policy on Exemption from Audit Requirement for a registered private fund and applies to all circumstances where an audit waiver, or extension, may be needed. Notwithstanding, the Authority expects all funds to comply with the requirement to obtain an audit under section 13(1) of the Law. Consequently, consideration for approval of audit exemptions will be done under exceptional circumstances only.
- 3.5. Where a fund is seeking an audit waiver in conjunction with an application for de-registration, this Regulatory Policy should be read in conjunction with any other guidance that the Authority may issue on the deregistration of private funds.

4. Definitions

- 4.1. "Private Fund" carries the meaning ascribed in the Private Funds Law (as amended).

5. General Considerations

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- 5.1. In considering whether to exempt a fund from the annual audit requirement, 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 creditors. In addition to the documents to be provided pursuant to section 6 below, an operator of the fund should provide written confirmation of the absence of such contravention.
- 5.2. The application fee prescribed in the Monetary Authority Law is payable upon submission of the application for the audit waiver.
- 5.3. The Authority may consider extending the fund's first audit period for a maximum of 18 months from the date of registration. Consideration may also be given to extending the fund's last audit period for a maximum of 18 months from the date of the last financial year end for which an audit has been filed.
- 5.4. In determining whether an exemption should be granted, the Authority shall assess each fund's request on a case by case basis, and after such assessment may consider an exemption in the following circumstances:
 - 5.4.1 a fund has not launched¹ but does not wish to be de-registered;
 - 5.4.1 a fund has not launched and is being liquidated or wishes to be de-registered;
 - 5.4.2 a fund has launched but has been unsuccessful in raising sufficient capital for sustainability;
 - 5.4.3 a fund is unable to obtain audited accounts due to events such as bankruptcy proceedings, legal or regulatory enforcement actions;
 - 5.4.4 a fund has been placed in compulsory liquidation² and the Authority is satisfied with the appointment of the liquidator and the scope of the liquidator's review;
 - 5.4.5 a fund is being voluntarily liquidated and a third party liquidator³ has been appointed under terms that require a review of the period since the last financial year end for which an audit has been filed;
 - 5.4.6 a fund is transferring to another jurisdiction within six (6) months of its last financial year end for which an audit has been filed, or is due to be filed; or
 - 5.4.7 a fund is dissolving by way of a merger within six (6) months of its financial year end for which an audit has been filed, or is due to be filed.

¹ "Launched" means where a fund has accepted capital commitments from investors for the purpose of investments

² "Compulsory liquidation" means involuntary official liquidation.

³ "Third party liquidator" means individuals, serving as liquidators in a voluntary liquidation of a fund, who are not the operators or currently engaged service providers (excluding an Auditor of the fund).

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The Authority may also in other exceptional circumstances and with absolute supervisory discretion grant an exemption from the audit requirement, upon the submission of information as requested by the Authority and necessary to support the request.

- 5.5. If a fund applies for an exemption for two consecutive years, the Authority may ask for additional information from the fund's operator or administrator about the reasons for the fund's inability to produce audited accounts.

6. Documents/Information to be Submitted

- 6.1. The subsequent paragraphs outline the relevant information and documents that should be submitted to the Authority in support of a request for an exemption from the annual audit requirement in each of the circumstances listed in subsection 5.4. Additionally, each request for an audit waiver should be accompanied by an explanation of the reason for the fund's inability to complete an audit.
- 6.1.1 Where a fund has not launched but does not wish to be deregistered, the requestor is required to submit 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 subscriptions from investors.
- 6.1.1 Where a fund has not launched and is being liquidated or wishes to be de-registered, the requestor should submit:
- (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 and transfer agent, liquidator or other service provider from whom the Authority would be willing to accept confirmation, that no subscriptions have been accepted from investors.
- 6.1.3 Where a fund has launched but has been unsuccessful in raising sufficient capital for sustainability, the requestor should submit an affidavit from an operator of the fund confirming that the fund has not raised sufficient capital for sustainability, no further subscriptions are being accepted from investors and all subscription monies received from investors have been returned.
- 6.1.4 Where a fund is unable to obtain audited accounts 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 agreed upon procedures and liquidators' reports in lieu of

the normal audited accounts.

- 6.1.5 Where a fund is being voluntarily liquidated and a third party liquidator has been appointed under terms that require a review of the period since the last financial year end for which an audit has been filed, the fund must submit a third party liquidator's report covering the period under such terms, which should include:
- (a) review of subscriptions and redemptions;
 - (b) reconciliations to bank accounts/statements;
 - (c) agreement of shareholder registers with net asset value statements;
 - (d) recalculation of performance and management fees;
 - (e) review of creditors and accruals;
 - (f) review for solvency; and
 - (g) report on matters relating to compliance with laws and regulations.
- 6.1.6 Where a fund is transferring to another jurisdiction within six (6) months of its last financial year end for which an audit has been filed, or is due to be filed, the fund shall provide to the Authority the information as set out in the Regulatory Procedure.
- 6.1.7 Where a fund is dissolving by way of merger within six (6) months of its last financial year end for which an audit has been filed, or is due to be filed:
- (a) The terminating or dissolving fund shall provide to the Authority the information as set out in the Regulatory Procedure and, where it is merging with a fund that is not regulated by the Authority, accounts for the period of its operation prior to the dissolution date; and
 - (b) The surviving fund, if regulated by the Authority, shall provide the information as set out in the Regulatory Procedure, as well as audited financial statements, as at its next audit period, which include the financial information of the terminating or dissolving fund for the duration of its operation during the audit period.
- 6.2 In such cases where affidavits are submitted, the Authority will satisfy itself as to whether the contents therein are sufficient and whether the affidavit may be accepted in lieu of audited accounts as required under the Law. The Authority may require additional evidence to be provided.
- 6.3 For funds seeking an audit waiver in conjunction with an application for de-registration, the documents and fee as outlined in the relevant sections of the Regulatory Procedure must be submitted