



MINISTRY OF
FINANCIAL SERVICES,
COMMERCE & ENVIRONMENT
CAYMAN ISLANDS GOVERNMENT

INDUSTRY ADVISORY

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AIFMD Update

The Legislative Assembly will consider amendments this August to two financial services laws, which are designed to establish an opt-in regime for regulating Cayman Islands-domiciled investment funds and managers connected to the European Union (EU). This is intended to facilitate the extension of the EU's Alternative Investment Fund Managers Directive (AIFMD) passport to the Cayman Islands.

The process to receive the passport is twofold. First, the European Securities and Markets Authority (ESMA), which regulates and supervises financial institutions in the European Union, will assess the technical preparedness of non-EU jurisdictions. Based on that assessment, ESMA will give its advice to the European Council and Parliament, as well as the European Commission (EC), in relation to which non-EU countries will be extended the benefit of the passport.

ESMA's initial advice is due on 22 July 2015, with further advice expected as ESMA completes its technical review of each relevant non-EU jurisdiction. The EC is then required to adopt a delegated act within three months of receiving advice from ESMA in relation to which non-EU countries will be extended the passport. The timing of the revisions to Cayman's financial services legislation is intended to coincide with ESMA's technical assessment of the Cayman Islands and the giving of its advice to the EC.

In the meantime, Cayman Islands investment funds may continue to be marketed in the EU under national private placement regimes that require, amongst other things, that Cayman's regulator, the Cayman Islands Monetary Authority (CIMA), have memoranda of understanding with individual EU Member States. Pursuant to the AIFMD, these arrangements can continue until at least 2018. ESMA will then consider whether or not the passport regime should displace national private placement regimes entirely. Until such time, the two approaches will continue in parallel.

Although much of Cayman's investment funds business stems from the US, Cayman's new AIFMD regime is designed to provide a future pathway between Cayman Islands-domiciled investment funds and managers, and the EU, with the intention of maintaining Cayman's leadership, and further growing its share, of the global mutual funds sector.

The two pieces of legislation that will be considered in August are the Mutual Funds (Amendment) Bill, 2015, and the Securities Investment Business (Amendment) Bill, 2015.

The Mutual Funds (Amendment) Bill makes provision for the regulation of Cayman investment funds that elect to be regulated by CIMA for AIFMD passport purposes. In the bill, a Cayman investment fund that makes such an election is referred to as a 'regulated EU connected fund', a category available to both open-ended funds as well as closed-ended funds.

The Securities Investment Business (Amendment) Bill makes provision for the regulation of Cayman fund management entities that engage in certain EU connected activities, as specified in the bill; and elect to be regulated by CIMA for AIFMD passport purposes. In this bill, a Cayman fund management entity that makes such an election is referred to as an 'EU Connected Manager', a category available to both current licensees under the Securities Investment Business Law and entities that are currently not required to be licensed under such law.

In addition, new regulations shall be made under the Mutual Funds Law and the Securities Investment Business Law that set forth new regulatory standards, consistent with AIFMD, to be followed by regulated EU Connected Funds and EU Connected Managers, respectively. The Ministry of Financial Services, with the assistance of CIMA and Cayman Finance, is in the process of preparing these new regulations for timely approval by the Cabinet of the Cayman Islands, shortly after the anticipated passage of the Mutual Funds (Amendment) Bill and the Securities Investment Business (Amendment) Bill by the Legislative Assembly.

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