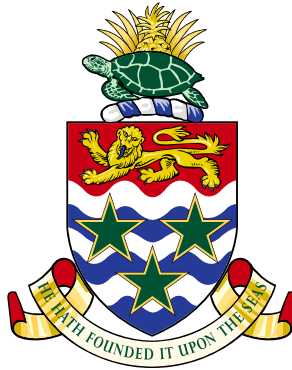


CAYMAN ISLANDS



MUTUAL FUNDS (AMENDMENT) BILL, 2020

Supplement No. 2 published with Legislation Gazette No. 3 dated 8th January, 2020.

A BILL FOR A LAW TO AMEND THE MUTUAL FUNDS LAW (2019 REVISION) TO ENHANCE THE REGULATORY AND SUPERVISORY FRAMEWORK FOR MUTUAL FUNDS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of Financial Services and Home Affairs (FSHA)



Memorandum of OBJECTS AND REASONS

This Bill amends the Mutual Funds Law (2019 Revision) (the “principal Law”) to enhance the regulatory and supervisory framework for mutual funds.

Clause 1 provides the short title and commencement of the legislation.

Clause 2 amends section 2 of the principal Law to clarify that the exemptions referred to in the definition of “licensed mutual fund administrator” are exemptions that were granted prior to the commencement of the Mutual Funds (Amendment) Law, 2006 and to add references to limited liability partnership.

Clause 3 amends section 4 of the principal Law to provide that mutual funds carrying on business in or from the Islands with equity interests held by not more than fifteen investors will now be required to register with the Authority.

Clause 3 further amends section 4 of the principal Law to provide, among other things, for the operator of a mutual fund registered in accordance with section 4(4) of the principal Law to submit an annual return in respect of each financial year. The registration of a mutual fund is for a period not exceeding three years.

Clause 3 also amends section 4 of the principal Law by inserting a new provision to make it an offence for a person to include information or an explanation that the person knows or should reasonably know is false or misleading in an offering document. A person who contravenes this provision commits an offence and is liable on conviction to a fine of one hundred thousand dollars.

Clause 4 amends section 5(1)(b) of the principal Law by deleting the reference to 4(1)(b) of the principal Law which refers to a mutual fund that is provided with a principal office in the Islands by a licensed mutual fund administrator.

Clause 5 amends section 8 of the principal Law to require that the accounts of a regulated mutual fund or mutual fund registered in accordance with section 4(4) of the principal Law be prepared in accordance with the International Financial Reporting Standards or the generally accepted accounting principles of the United States of America, Japan or Switzerland or any non-high risk jurisdiction.

Clause 7 amends section 9(1) of the principal Law by deleting the words “licensed” and “licence” in relation to mutual funds.

Clause 8 amends section 10 of the principal Law to correct a typographical error by deleting the word “all” and substituting the word “shall”.

Clause 9 amends section 29 of the principal Law to add a reference to a mutual fund registered under section 4(4)(a) of the principal Law in light of the changes to that section.

Clause 10 amends section 30 of the principal Law to clarify that certain references are to regulated mutual funds.

Clause 11 amends section 32 of the principal Law to add a reference to a mutual fund registered under section 4(4)(a) of the principal Law in light of the changes to that section.

Clause 12 amends section 35 of the principal Law to make it applicable to a mutual registered in accordance with section 4(4) of the principal Law. Clause 12 also amends section 35 of the principal Law by repealing subsection (6) of that section.

Clause 13 repeals section 37 of the principal Law which provides for indemnities.

Clause 14 repeals section 38 of the principal Law which clarified the common law restriction on alienation.

Clause 15 makes savings and transitional provisions for those mutual funds that immediately before the commencement of the Law are carrying on business in or from the Islands without complying with section 4(1) of the principal Law.



CAYMAN ISLANDS**MUTUAL FUNDS (AMENDMENT) BILL, 2020****Arrangement of Clauses**

Clause	Page
1. Short title and commencement	7
2. Amendment of section 2 - definitions	7
3. Amendment of section 4 - regulated mutual funds	9
4. Amendment of section 5 – Mutual Fund Licences	9
5. Amendment of section 8 - annual audit of regulated mutual fund	9
6. Amendment of section 9 - regulated mutual fund to pay annual fee	10
7. Amendment of section 10 - person to be authorised to administer mutual funds	10
8. Amendment of section 23 - special audits of regulated mutual funds or regulated EU Connected funds	11
9. Amendment of section 29 - Authority to administer Law	11
10. Amendment of section 30 - powers of Authority in respect of regulated mutual funds or regulated EU Connected Funds	11
11. Amendment of section 32 - Authority may attend winding-up proceedings	12
12. Amendment of section 35 - obligation of auditors	12
13. Repeal of 37 - indemnity	12
14. Repeal of section 38 - common law restriction on alienation clarified	12
15. Savings and transitional	12

CAYMAN ISLANDS

**MUTUAL FUNDS (AMENDMENT) BILL, 2020**

A BILL FOR A LAW TO AMEND THE MUTUAL FUNDS LAW (2019 REVISION) TO ENHANCE THE REGULATORY AND SUPERVISORY FRAMEWORK FOR MUTUAL FUNDS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title and commencement

1. (1) This Law may be cited as the Mutual Funds (Amendment) Law, 2020.
- (2) This Law shall come into force immediately after the commencement of the *Private Funds Law, 2020*.

Amendment of section 2 - definitions

2. The *Mutual Funds Law (2019 Revision)*, in this Law referred to as the “principal Law”, is amended in section 2 as follows —
 - (a) in the definition of the words “**licensed mutual fund administrator**”, by deleting the words “section 10(2)” and substituting the words “this Law prior to the commencement of the *Mutual Funds (Amendment) Law, 2006*.”;
 - (b) in the definition of the words “**mutual fund administration**”, in paragraph (b), by inserting after the words “*Exempted Limited Partnership Law (2018 Revision)*,”

the words “*Limited Liability Partnership Law, 2017, Limited Liability Companies Law (2018 Revision)*,”;

- (c) in the definition of the words “**mutual fund administrator**” —
 - (i) in paragraph (c) by deleting the word “or”;
 - (ii) in paragraph (d) by deleting the comma and substituting a semi-colon; and
 - (iii) by inserting after paragraph (d) the following paragraphs —
 - “(e) a limited liability partnership registered under the *Limited Liability Partnership Law, 2017*, or
 - (f) a limited liability company registered under the *Limited Liability Companies Law (2018 Revision)*,”;
- (d) in the definition of the word “**partnership**”, by inserting after the words “*Exempted Limited Partnership Law (2018 Revision)*” the words “a limited liability partnership registered under the *Limited Liability Partnership Law, 2017*,”;
- (e) in the definition of the words “**public in the Islands**” —
 - (i) in paragraph (d) by deleting the word “or” where it last appears;
 - (ii) by inserting after paragraph (d) the following paragraphs —
 - “(da) a limited liability partnership registered under the *Limited Liability Partnership Law, 2017*;
 - (db) a limited liability company registered under the *Limited Liability Companies Law (2018 Revision)*; or”;
- (f) in the definition of the words “**registered office**” —
 - (i) by deleting paragraph (b) and substituting the following paragraph —
 - “(b) in the case of a foreign company as defined by section 183 of the *Companies Law (2018 Revision)*, the person or persons authorized to accept service on behalf of the company in accordance with section 184(1)(e) of that Law,”;
 - (ii) in paragraph (c) by deleting the word “or”; and
 - (iii) by inserting after paragraph (c) the following paragraphs —
 - “(ca) in the case of a limited liability partnership, the registered office of that partnership for the purposes of the *Limited Liability Partnership Law, 2017*;
 - (cb) in respect of a limited liability company, the registered office of the company for the purposes of the *Limited Liability Companies Law (2018 Revision)*; or”.



Amendment of section 4 - regulated mutual funds

3. The principal Law is amended in section 4 as follows —

- (a) in subsection (1) as follows —
 - (i) by deleting the words “or is exempted under subsection (4)” and substituting the words “or (4)”; and
 - (ii) by repealing paragraph (b) and substituting the following paragraph —

“(b) it is registered with the Authority in the prescribed manner and a licensed mutual fund administrator is providing its principal office in the Islands,”;
- (b) in subsection (4), in paragraph (a), by deleting the words “; or” and substituting the words “and unless an exemption from this requirement has been granted by the Authority —
 - (i) there is filed with the Authority a certified copy of an extract of the constitutional documents of the mutual fund specifying that a majority of the investors in number are capable of appointing or removing the operator of the mutual fund;
 - (ii) there is filed with the Authority such other information as may be required in the prescribed form;
 - (iii) it is registered with the Authority in the prescribed manner; and
 - (iv) the prescribed annual registration fee has been paid in respect of the mutual fund;”;
- (c) by inserting after subsection (10) the following subsection —

“(11) The operator of a mutual fund registered in accordance with subsection (4) shall, in respect of each financial year of the mutual fund, submit an annual return in the prescribed form.”.

Amendment of section 5 – Mutual Fund Licences

4. The principal Law is amended in section 5(1)(b) by deleting the words “, or (b)”.

Amendment of section 8 - annual audit of regulated mutual fund

5. The principal Law is amended in section 8 as follows —

- (a) in the section header by inserting after the words “regulated mutual fund” the words “or mutual fund registered under section 4(4)(a)”; and

- (b) in subsection (1) by inserting after the words “regulated mutual fund” the words “or mutual fund registered under section 4(4)(a)”;
- (c) by inserting after subsection (1) the following subsections —
- “(1A) The accounts of a regulated mutual fund or mutual fund registered under section 4(4)(a) shall be prepared in accordance with the International Financial Reporting Standards or the generally accepted accounting principles of the United States of America, Japan or Switzerland or any non-high risk jurisdiction.
- (1B) The annual audit under subsection (1) shall be carried out in accordance with the International Standards on Auditing or the generally accepted auditing standards of the United States of America, Japan, Switzerland or a non-high risk jurisdiction.”;
- (d) in subsection (2), by inserting after the words “regulated mutual fund” the words “or mutual fund registered under section 4(4)(a)”;
- (e) in subsection (3) by —
- (i) inserting after the words “regulated mutual fund” the words “or mutual fund registered under section 4(4)(a)”;
- (ii) deleting the words “ that the mutual fund” and substituting the words “that the regulated mutual fund or mutual fund registered under section 4(4)(a)”;
- (f) in subsection (4), by inserting after the words “regulated mutual fund” the words “or mutual fund registered under section 4(4)(a)”;
- (g) by inserting after subsection (4) the following subsection —
- “(5) In subsection (1A) —
- “**International Financial Reporting Standards**” means the accounting and reporting standards developed and issued by the International Accounting Standards Board; and
- “**non-high risk jurisdiction**” means any jurisdiction that is not on the list of high risk jurisdictions issued by the Financial Action Task Force.”.

Amendment of section 9 - regulated mutual fund to pay annual fee

6. The principal Law is amended in section 9(1) by deleting the words “licensed” and “licence”.

Amendment of section 10 - person to be authorised to administer mutual funds

7. The principal Law is amended in section 10 by deleting the word “all” and substituting the word “shall”.



Amendment of section 23 - special audits of regulated mutual funds or regulated EU Connected funds

8. The principal Law is amended in section 23 as follows —
- (a) in the section header by inserting after the words “regulated mutual fund” the words “, mutual fund registered under section 4(4)(a)”; and
 - (b) in subsections (1) and (2) by inserting after the words “regulated mutual fund” wherever they appear the words “, mutual fund registered under section 4(4)(a)”.

Amendment of section 29 - Authority to administer Law

9. In section 29(2)(c), by inserting after the words “regulated mutual funds” the words “, mutual fund registered under section 4(4)(a)”.

Amendment of section 30 - powers of Authority in respect of regulated mutual funds or regulated EU Connected Funds

10. The principal Law is amended in section 30 as follows —
- (a) in the section header, by inserting after the words “regulated mutual fund” the words “, mutual fund registered under section 4(4)(a)”; and
 - (b) in subsection (1)(a), (b) and (e), by inserting after the words “regulated mutual funds” the words “, mutual fund registered under section 4(4)(a)”; and
 - (c) by inserting after subsection (2), the following subsection —
 - “(2A) For the purposes of alerting it as to whether an event referred to in subsection (1) has occurred or is likely to occur, the Authority shall immediately enquire into and ascertain the reason for any failure by a mutual fund registered under section 4(4)(a) —
 - (a) to pay its annual registration fee in accordance with section 4(4)(a); or
 - (b) to have its accounts audited or to submit the audited accounts to the Authority when instructed to do so under section 23(1).”;
 - (d) in subsection (3) as follows —
 - (i) in paragraph (b) by deleting the words “any Mutual Fund Licence the mutual fund holds” and substituting the words “the mutual fund”; and
 - (ii) in paragraph (d) by deleting the words “the fund” and substituting the words “the mutual fund”; and
 - (e) in subsection (16) by deleting the words “4(1)(b) or 4(3)” and substituting the words “section 4(1)(b), (3) or (4)(a)”.

Amendment of section 32 - Authority may attend winding-up proceedings

11. The principal Law is amended in section 32(1)(a) by inserting after the words “regulated mutual fund” the words “, mutual fund registered under section 4(4)(a)”.

Amendment of section 35 - obligation of auditors

12. The principal Law is amended in section 35 as follows —
- (a) in subsections (1), (3), (4), (5), (7) and (9) by inserting after the words “regulated mutual fund” the words “, mutual fund registered under section 4(4)(a)”; and
 - (b) by repealing subsection (6).

Repeal of 37 - indemnity

13. The principal Law is amended by repealing section 37.

Repeal of section 38 - common law restriction on alienation clarified

14. The principal Law is amended by repealing section 38.

Savings and transitional

15. A mutual fund that immediately before the commencement of this Law was carrying on business in or from the Islands without complying with section 4(1) of the principal Law because the equity interests in the mutual fund are held by not more than fifteen investors, the majority of whom are capable of approving or removing the operator of the fund, may continue to carry on business in or from the Islands without complying with section 4(1) for a period of not more than six months after the date of commencement of this Law or such further period as may be specified by the Authority.

Passed by the Legislative Assembly the day of , 2020

Speaker

Clerk of the Legislative Assembly

