

FUND FINANCE FRIDAY

A Lender's Guide to New Year's Resolutions (and Ongoing Requirements) of Cayman Islands Private Funds

January 15, 2021 | Issue No. 109



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The Cayman Islands Private Fund Act* was a uniquely 2020 occurrence but, with the turn of the year into 2021, Cayman Islands private funds (“private funds”) have recently passed “Go” for the first time. As you’d expect, none of them will get to collect \$200, but what do private funds need to do to remain compliant with their core responsibilities under the PF Act? And can compliance be checked or verified by lenders?

**In case you missed it, in a final nod to 2020, the Cayman Islands recently replaced all references in its legislation from “Law” to “Act” – so the PF Law is now the PF Act!*

Is there anything that lenders can request when closing fund finance transactions to verify the ongoing PF Act compliance of private funds?

The quick answer to this question is yes – there is a way to verify if a private fund is up to date with its required payments and filings. Up until now this would not have been applicable (as by registering in 2020, private funds would have remained up to date with filings and fees until 31 December 2020) but, as it has now become relevant, lenders should be aware that the Cayman Islands Monetary Authority (“CIMA”) will issue a “letter of good standing” in respect of private funds, confirming that the relevant private fund is up to date with payments and filings due to CIMA. From a transactional perspective, it is worth noting that these letters can take a few days to obtain (they are not available on a rapid basis in the same way that certificates of good standing are obtained from the Registrar of Companies/Exempted Limited Partnerships), and the fee for such certificates is US\$975 per entity.

So what are the New Year's resolutions (compliance requirements) for private funds under the PF Act?

1. Payment of Annual Fees

Each private fund is required to have paid CIMA its annual fees for 2021 by 15 January in each year (which is today for 2021). In practise, this process is undertaken by the private fund's service provider in the Cayman Islands who will have invoiced each private fund it acts as registered office to in late 2020 with a view to paying the government and CIMA fees on behalf of such private funds (as is standard market practise).

Lender query: what are the outcomes of late payment or non-compliance?

Failure to meet the payment deadline will mean that the private fund is not in good standing with CIMA. From a lender perspective, there is no immediate cause for panic if this occurs with a private fund that is party to a credit facility, as in the first instance, the penalty from CIMA is monetary (one-twelfth of the annual fee for each month that payment is late). Over time, however, non-payment of fees could result in de-registration of a private fund (and the resulting possible issues for capital calls), and so if a lender becomes aware of non-compliance in this regard by one of its borrowers, it is important that action is promptly taken to resolve any issues.

2. Filing of Audited Accounts and Fund Annual Return

Private funds are required to file with CIMA their audited accounts within six months of the end of the private fund's financial year. For most private funds, this will mean they are required to file audited accounts with CIMA in respect of the financial year ended 31 December 2020 by 30 June 2021. A private fund must also file an annual return with CIMA. The annual return is typically submitted through the auditor and includes general information about the private fund, operational information such as the nature of the investments held, as well as financial information about the private fund.

Lender query: what are the outcomes of late filing or non-compliance?

Failure to file accounts or the fund annual return by the deadline will mean that the private fund is not in good standing with CIMA. From a lender perspective, again there is no immediate cause for panic if this occurs with a private fund that is party to a credit facility, as in the first instance, the penalty from CIMA would likely be a monetary fine. Over time, however, non-compliance could result in de-registration of a private fund, which will raise issues for future capital calls. If a lender becomes aware of non-compliance in this regard by one of its borrowers, it is important that action is promptly taken to resolve any issues.

3. Information Updates

Any changes to a private fund's registered office or principal office or any change that materially affects the information submitted to CIMA as part of its registration application (which would generally include details of the managers/directors of the general partner, the auditors, the investment manager (where applicable) and Cayman Islands legal counsel) must be communicated to CIMA within 21 days of such change.

Lender query: what are the outcomes of late filing or non-compliance?

Compliance with this aspect of the PF Act is not something that can be verified by the CIMA letter of good standing (as CIMA would not be independently aware were such information to change). Non-compliance with this requirement would not be expected to be an immediate issue in respect of the registered status of the private fund but may attract financial penalties from CIMA and, over time, could give rise to increased scrutiny from CIMA were multiple infractions to occur. Where a lender becomes aware of registered office changes, offering document updates, etc., it would be wise to request confirmation that such CIMA filings have occurred.

Conclusion

Private funds are much more likely to comply with the above requirements than each of us is with our New Year's resolutions (which are probably long gone by now!). However, as existing deals are amended and new money deals are closed, the question of compliance with the above aspects of the PF Act and provision of CIMA letters of good standing will become of greater relevance. Approaches will of course vary amongst lenders, and it is worth noting that on the issue of PF Act compliance their interests are very much aligned with sponsors, but notwithstanding the CIMA letter of good standing, should serve to be a valuable due diligence backstop in cases where verification is sought or required.