



REGULATORY POLICY

Exemption from Audit Requirement for a Private Fund

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List of Acronyms

PFA	Private Funds Act (as amended)
MAA	Monetary Authority Act (as amended)

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1. Statement of Objectives

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

2. Scope of Application

- 2.1. This Policy is applicable to Private Funds that are required to be audited under section 13(1) of the Private Funds Act (as amended) ("PFA").
- 2.2. Pursuant to section 3(2) of the PFA, Private Funds that have not received capital contributions from investors for the purposes of investment are exempt from Part 3 of the PFA which includes section 13(1) referenced above. Consequently, this Regulatory Policy does not apply to Private Funds that have not received capital contributions and such funds are not required to submit an audit waiver application to the Authority. Notwithstanding, the Private Funds (Amendment) Regulations, 2021, requires a declaration to be filed with the Authority that attests to the Private Fund not being in receipt of capital contributions.

3. Introduction

- 3.1. Pursuant to section 13(1) of the PFA, "a private fund shall have its accounts audited annually..."
- 3.2. Section 13(4) of the PFA requires a Private 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 PFA 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 Private Fund and applies to all circumstances where an audit waiver, or extension, may be needed. Notwithstanding, the Authority expects all Private Funds that have received capital contributions from investors for the purposes of investment to comply with the requirement to obtain an audit under section 13(1) of the PFA. Consequently, consideration for approval of audit exemptions will be done under exceptional circumstances only.
- 3.5. Where a Private 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.

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4. Definitions

- 4.1. "Private Fund" carries the meaning ascribed in the PFA.

5. General Considerations

- 5.1. In considering whether to exempt a Private 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 Act is payable upon submission of the application for the audit waiver.
- 5.3. The Authority may consider extending the Private 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 Private 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 Private Fund has launched¹ but has been unsuccessful in raising sufficient capital for sustainability;
 - 5.4.2. a Private Fund is unable to obtain audited accounts due to events such as bankruptcy proceedings, legal or regulatory enforcement actions;
 - 5.4.3. a Private 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;
 - 5.4.4. a Private 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;
 - 5.4.5. a Private 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

¹ "Launched" means where a Private Fund has received capital contributions from investors.

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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- 5.4.6. a Private 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.
- 5.5. 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.
- 5.6. If a Private 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 and 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 Private Fund's inability to complete an audit.
 - 6.1.1. Where a Private 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 contributions are being accepted from investors and all contribution monies received from investors have been returned.
 - 6.1.2. Where a Private 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.
 - 6.1.3. Where a Private 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 contributions and withdrawals;
 - (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 acts and regulations.

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- 6.1.4. Where a Private 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 any other guidance that the Authority may issue on the deregistration of private funds.
- 6.1.5. Where a Private 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 any other guidance that the Authority may issue on the deregistration of private funds 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 any other guidance that the Authority may issue on the deregistration of private funds, 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 PFA. The Authority may require additional evidence to be provided.
- 6.3. For a Private Funds seeking an audit waiver in conjunction with an application for de-registration, the documents and fee as outlined in the relevant sections of any other guidance that the Authority may issue on the deregistration of private funds must be submitted.