

Guidance Note

Registration and Continuing Obligations of
Section 4(4) Funds in the Cayman Islands

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Introduction

This Guidance Note sets out the registration and continuing obligations of a section 4(4) fund registered with the Cayman Islands Monetary Authority ("CIMA") under the Mutual Funds Act (the "MFA").

Registration

All section 4(4) funds must register with CIMA. Registrations must be made through CIMA's Regulatory Enhanced Electronic Forms Submission ("REEFs") web portal. Stuarts has access to REEFs and will attend to registrations and ongoing filings for our clients. In order to register with CIMA, a section 4(4) fund is required to file: (i) application form ("CIMA Form"); (ii) application fee; (iii) certificate of incorporation/registration; (iv) offering memorandum/summary of terms/marketing material (as applicable); (v) confirmation that majority of investors have the power to appoint/remove the operator(s) (constitutional documents/resolution/offering memorandum); (vi) administrator's consent letter; and (vii) auditor's consent letter.

Ongoing Obligations

Annual Fee. There is an annual fee payable to CIMA of US\$4,268 in each year. Such fee must be paid by 15 January subject to penalties. There is also a fund annual return fee payable in each year of US\$366.

Operators. Section 4(4) funds are subject to the 'four-eyes principle' and require a minimum of two natural persons acting as directors of the fund where it is structured as a company or for the general partner of the fund where it is structured as a partnership. Beneficial Owners.

Director Registration. Directors of section 4(4) funds will be to register with CIMA and maintain such registration on an annual basis pursuant to the Directors Registration and Licensing Act, 2014. Directors must also actively deregister from CIMA where such registration is no longer required (or will be subject to ongoing annual fees until such time as they deregister).

Material Information. Where a section 4(4) fund (a) makes any changes, or becomes aware of any changes, that materially affects any information submitted to CIMA under the provisions of the MFA; or (b) changes its registered office or the location of its principal office, the fund shall within twenty-one days after making the change or becoming aware of the change, as the case may be, file with CIMA the details of the changes (eg by way of an amended offering document or supplement and updated CIMA Form). CIMA will charge a filing fee of US\$122 for each filing.

Annual Audit. A section 4(4) fund shall have its accounts audited annually by an auditor approved by CIMA. Accounts will need to be prepared in accordance with 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. Accounts are required to be filed with CIMA within six months of the financial year end of the section 4(4) fund.



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Fund annual return. A section 4(4) fund will, in respect of each financial year of the fund, be required to submit an annual return in the prescribed form.

Penalties. The MFA provides for a penalty of US\$122,000 for a section 4(4) fund failing to comply with the conditions contained in its license or providing false or misleading information to CIMA. The operator of a section 4(4) fund which fails to file the fund's annual audit within six months of the financial year end of the fund (subject to extension by CIMA) commits an offence and is liable on conviction to a fine of US\$25,000. Where a person operates a section 4(4) fund in contravention of the MFA such person commits an offence and is liable on conviction to a fine of US\$122,000. Where a person represents in any way that he/she is carrying on or attempting to carry on business in or from the Cayman Islands as a section 4(4) fund and is not registered with CIMA, such person is guilty of an offence and liable on conviction to a fine of US\$122,000. In addition, CIMA has extensive power to impose a significant administrative fine of up to US\$1.2 million for a breach of the AntiMoney Laundering Regulations of the Cayman Islands.

Powers of CIMA. If CIMA determines that a section 4(4) fund is (i) or is likely to become insolvent, (ii) carrying on its business fraudulently, (iii) winding up its business in a manner that is prejudicial to its investors or creditors, (iv) not in compliance with the MFA or the Anti-Money Laundering Regulations (2020 Revision), as amended, (v) being managed in a manner which is not "fit and proper" or (vi) operated or managed by a person who is not "fit or proper" to hold the position of operator, manager or officer, CIMA may take various punitive actions; including, canceling the section 4(4) fund's registration, imposing conditions on the fund, appointing a person to advise the fund on proper conduct and requiring removal and replacement of the promoter, directors, general partner or, manager of the fund. Any operator appointed by CIMA will have all the powers necessary to conduct the business and affairs of the fund in the best interests of the fund's investors and creditors. The Grand Court may also grant CIMA authority to take such other action deemed necessary to protect the interests of the fund's investors and creditors. CIMA may communicate directly with the investors of a section 4(4) fund. Costs associated with enforcement, including appointment of advisors and operators, are expenses of the section 4(4) fund. General Partners, managers and other operators are responsible for compliance by the section 4(4) fund with the MFA.

CIMA Regulatory Measures. In addition to the requirements set out under the MFA, a section 4(4) fund is subject to the general regulatory oversight of CIMA which includes the requirement to comply with CIMA's rules, statements of guidance, policies and procedures. Of note, section 4(4) funds must comply with the Statements of Guidance on Corporate Governance and Nature, accessibility and retention of records each of which can be accessed by clicking on the relevant link. In addition, CIMA has published the Rule on the Contents of Offering Documents for Regulated Mutual Funds. This Rule sets out the specific content that should be included in offering documents for a regulated mutual fund. Funds are expected to follow this CIMA Rule. If your offering document(s) have not been updated recently, then you should consider updating them to ensure compliance.

AEOI. Where a section 4(4) fund is a 'financial institution' for FATCA or CRS purposes it must comply with the automatic exchange of information requirements. Please see our Guidance Note on the Automatic Exchange of Information for further information.

AML. All section 4(4) funds must comply with the anti-money laundering regime in the Cayman Islands. Please see our Guidance Note on AML for Funds for further information.



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Data Privacy. The Cayman Islands Data Protection Act, 2017 ("DPA"), came into force on 30 September 2019. A section 4(4) fund is a 'data controller' and must comply with the data protection principles set out in the DPA when processing personal data. It must also ensure those principles are complied with where the personal data is processed on behalf of the data controller (e.g., by the administrator of the fund). Please see our Guidance Note on Data Protection for further information.



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Appendix

An Applicant for Registration as a VASP Entity will need to provide the following to CIMA as part of the Application Process:

- (1) CIMA Forms:
 - (i) VA Declaration;
 - (ii) REEFs Application Form (APP-101-84);
 - (iii) REEFs AML/CFT Inherent Risk Form (AIR 157-84);
 - (iv) Personal Declaration (for each director/senior officer); and
 - (v) Personal Declaration (for each shareholder who holds over 10%).
- (2) Consent Letter:
 - (i) Auditor Consent Letter (as applicable).
- (3) Policies:
 - (i) Cyber Security Policy;
 - (ii) Data Protection / Internal Safeguards;
 - (iii) Risk Management Methodology;
 - (iv) AML/CFT/PF/TSF Policy; and
 - (v) Business Plan and Safeguards Asset Protection Policy.
- (4) Corporate Documents:
 - (i) Certificate of Incorporation/Registration;
 - (ii) Register of Members; and
 - (iii) Register of Directors.
- (5) Resumes:
 - (i) AML Officers Resumes/CVs;
 - (ii) CV (for each director/member/partner/senior officer); and
 - (iii) CV (for chief information officer/chief information security officer).
- (6) Reference Letters (for each director/10%+ shareholder/senior officer):
 - (i) Academic and Professional Qualifications (certified copies);
 - (ii) CV (up to date and comprehensive);
 - (iii) Professional/Personal Reference Letter x 2 (see sample);
 - (iv) Bank Reference Letter x 1 (see sample);
 - (v) Police Clearance Certificate x1 (see sample); and
 - (vi) For 10%+ shareholders only - Declaration of Source of Funds (see sample) with supporting evidence.
- (7) Additional information:
 - (i) List of the Applicant's Blockchain addresses (separated by coin);
 - (ii) Transaction flow charts;
 - (iii) Details of outsourced arrangements and related agreements;
 - (iv) A comprehensive full group companies structure chart, including UBOs;
 - (v) Details of regulated status of entities within the group the relevant regulated services and jurisdictions; and
 - (vi) Details of services provided by any related entity to the VASP.
- (8) Fees:
 - (i) Application Fee – CI\$ 1,000.00; and
 - (ii) Registration Fee – variable – an additional fee of between CI\$ 1,000 and CI\$ 15,000 will be payable depending on the type of virtual asset services and, if applicable, CIMA's assessment of other factors including the nature, size and complexity of the services.



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Guidance

This publication is for general guidance and is not intended to be a substitute for specific legal advice. Specialist advice should be sought about specific circumstances. If you would like further information, please contact:

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