Snapshot: Cayman's Private Fund registration – what have we learnt?

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Private equity sponsors, investors, lenders and service providers will be well aware of the Cayman Islands' prominence as a domicile for global PE funds. For the best part of 20 years, sponsors and their global advisers have been attracted by Cayman's neutrality, efficiency, quality and flexibility – but also by its predictability.

So when, at the prompting of the EU, Cayman announced in early 2020 that all Cayman-domiciled closed-ended funds (including PE and real estate funds) would be required to register with the regulator (CIMA) by August 2020, this seemed like a shake-up.

Now that the dust has settled, what did we learn?

1. There are a lot of Cayman funds. Over 12,200 closed-ended entities registered by the August deadline. These funds are in addition to the more than 11,600 open-ended hedge funds already registered with CIMA.
2. Cayman's client base is heavily institutional. Nine out of 10 of the top global PE sponsors have multiple funds in Cayman – as do 16 out of the top 20. Well over 10% of registered fund vehicles are managed by these elite sponsors.
3. Elisabeth Kübler-Ross was right. We saw initial denial and gloom, occasional aggravation and bargaining, but ultimately acceptance – albeit somewhat grudging in the case of funds past their commitment periods and for those vehicles that had never really considered themselves to be 'funds'. Some clients and investors, especially in Europe, actively welcomed the new level of regulatory oversight.
4. The ongoing obligations generally reflect how most funds have been operating anyway. The new legislation formalises requirements around custody, cash monitoring and valuation that at first seemed intrusive. But in practice these have not presented any issue for the great majority of funds. The focus on ensuring clear delegations and cogent policies and procedures was in many cases beneficial and served as an involuntary health check. Investors benefit from enhanced conflict disclosures.

The three unknowns are how the audit process will go in practice, especially for non-mainstream vehicles whose investments and structures are not well suited to delivery of audited financial statements within six months of financial year end; how CIMA will exercise and enforce its regulatory powers; and how the CIMA deregistration requirements will marry up with the long wind down periods for PE funds at end of term.

For this unusual year it feels fitting to mandate PE funds to accept a "new normal". That so many thousands have done so says something about the resilience of Cayman PE structures – and perhaps even human nature.

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