

FUND FINANCE FRIDAY

Thinking about (Non-Fund) Arrangements for the Holidays and Dinner with the In-(PF)Laws

December 4, 2020 | Issue No. 105



By Derek Stenson
Partner | Conyers



By Michael O'Connor
Associate | Conyers

As mentioned in the most recent edition of *Fund Finance Friday*, the Cayman Islands Monetary Authority (“CIMA”) has recently issued its Statement of Guidance on Non-Fund Arrangements (the “SOG”).

If you are having a busy December and want to think less about Cayman issues, you can do so – the SOG doesn’t introduce any substantive changes to how the market has been operating and classifying entities since the coming into effect of the Private Funds Law (“PF Law”), and it won’t have any material effect on the way transactions have worked where the issue is of relevance.

All information is good information, however,* and those who have been involved in discussions on transactions about whether and why certain entities are classified as non-fund arrangements may be interested to see the views CIMA holds on the various categories.

**Not a real saying, but when in Rome!*

What do lenders need to know about the SOG and what aspects are applicable to fund finance?

The SOG is essentially CIMA’s high-level views on what type of vehicles are likely to meet the categories of non-fund arrangements listed in the Schedule to the PF Law (and any vehicle that falls within one of these categories is not required to register with CIMA under the PF Law). It is important to note that the SOG does not, and is not intended to, provide definitive views on each and every vehicle, and so the position remains as before: that each entity must be

examined in its own right and merits for whether its intended purpose and effect is a "private fund" or it is a "non-fund arrangement."

Most of the categories in the SOG will be of little relevance to fund finance (insurance vehicles, debt issuance vehicles, securitization vehicles, etc.), but some of the categories (most notably, holding vehicles and proprietary vehicles) do have relevance to certain vehicles that arise in private equity structures. The additional detail in this regard is to be welcomed, and while it will not answer every question in each case (and so is unhelpful to be included here in the abstract), it will provide some concepts within which certain vehicles can clearly be classified.

While the SOG is relatively new, the market reaction to date has been that the guidance contained in it is broadly in line with what was expected and is consistent with how such vehicles have and continue to be classified by Cayman Islands practitioners.

Do lenders need to ask any additional questions of borrowers?

Our advice to lenders to date has been that where a Cayman Islands credit party is not registered with CIMA, this should be queried, and this advice remains the same. In instances where a non-fund arrangement arises in a borrower's structure, our advice continues to be that the borrower's Cayman counsel should confirm which category of non-fund arrangement is applicable (and, in our experience, this has become customary). The SOG provides additional detail and will be of use in any discussions where clarity is sought between borrower and lender counsels in seeking to finalize transaction due diligence but, aside from enlightening such conversations, the SOG should not pose any more transaction steps for lenders or borrowers to concern themselves with.