DMS

GOVERNANCE. RISK. COMPLIANCE.

20 YEARS 2000 - 2020

# FUND GOVERNANCE REVIEW

QUARTER 1 | 2020

DMSGOVERNANCE.COM

# FUND GOVERNANCE REVIEW

After a turbulent 2019 that saw significant global regulatory changes and questions surrounding Brexit, 2020 began on equally unsure footing with the beginnings of what is now the global Covid-19 (Coronavirus) pandemic.

These are extraordinary and unprecedented times and as markets react to this unpredictability around the world, it is more important than ever that our clients can rely on therecommendations and expertise of DMS and its teams across the globe.

# LATEST REGULATORY UPDATES

**DMS Update On FATCA And CRS Regulations: What You Need To Know**

The Cayman Islands Department for International Tax Cooperation (DITC) recently issued the following amendments to the FATCA and CRS Regulations:

The annual reporting deadline for CRS and FATCA has changed to 31 July 2020. The DITC is currently developing a new portal for all registrations, notifications and reporting purposes which will be available from June 2020. All functionality (i.e. notifications and reporting) will be available at that time and as a result of these changes and the implementation of the new DITC Portal, the deadline for the 2019 FATCA and CRS reporting will now be 18 September 2020. Read More

**Mutual Funds Exemption Removed: What Action Does Your Fund Need To Take?**

Further to our previous update, the Mutual Funds (Amendment) Law, 2020 ("the Law") was enacted and became effective February 7th 2020. The Law removes the previously existing exemption under Section 4 (4) from registration for hedge funds having 15 or less investors, where those investors have the power to appoint directors, GP etc. As a result, those entities, with greater than one but less than 15 investors, will cease to be exempt from the Mutual Funds Law and will be required to register with the Cayman Islands Monetary Authority ("CIMA") and to comply with the Mutual Funds Law in full. Read More

**DMS Funds Update: New Private Funds Law Implementation and Timing**

Further to our prior update, the Private Funds Law, 2020 (the "Law") is now in force having commenced on 7th February 2020.

All Cayman domiciled entities, meeting the definition of private funds, who are doing business (have called investor capital) on or after 7th February 2020 have a transition period until 7th August 2020 to comply with the Law and, in particular with the registration requirements as a result of there being no separate timetable for existing funds.
Read More

**NEW FUND STRUCTURE LAUNCHES IN SINGAPORE – VARIABLE CAPITAL COMPANY ("VCC")**

The much-anticipated Singapore Variable Capital Companies (VCC) framework was launched on 15 January 2020. The framework is a collective effort by a number of stakeholders to ensure that a corporate structure is in place that has the operational flexibility and cost savings that can be readily used by a wide range of investment funds.

As part of the launch, 18 fund managers took part in the VCC pilot programme, incorporating or re-domiciling a total of 20 investment funds as VCC. These investment funds comprised venture capital, private equity, hedge fund and Environment and Social and Governance (ESG) strategies, highlighting the viability and flexibility of the VCC framework across diverse use cases. Read More

# THE CAYMAN ISLANDS EXPECTS A SWIFT RESOLUTION TO THE EU BLACKLIST INCLUSION

It was announced at the end of February 2020 that the Cayman Islands had been included by the finance ministers of the EU member states ("ECOFIN") in the list of non-cooperative jurisdictions for tax purposes. The Cayman Islands Government is working with EU Officials on the ongoing measures to address the concerns and has issued the following statement regarding this process, its commitment and the current legislative changes that are in place, which can be **read** here.

Following this inclusion, The Cayman Islands Government has begun the process of removing Cayman Islands from the blacklist. The current list will be reviewed for additions and removals twice annually commencing in October 2020. The Cayman Islands Government confirmed its commitment to take any necessary steps with respect to legislative change that would be required for de-listing.
How will the listing affect my fund and what does it mean in practical terms?

- EU investors **can continue** to stay invested in funds domiciled in the listed jurisdictions.
- EU investors **can increase** their investment in funds domiciled in the listed jurisdictions.
- Funds domiciled in the listed jurisdictions **can be marketed** to EU investors under the existing private placement regimes.

The EU member states have been working both independently and in collaboration with the Organisation for Economic Co-operation and Development ("OECD")/ G20 Inclusive Framework on Base Erosion and Profit Shifting ("BEPS") to put an end to tax avoidance strategies that exploit gaps and mismatches in tax rules in order to avoid paying tax. The BEPS Inclusive Framework comprises the work of over 135 countries, including the Cayman Islands.

The Cayman Islands as a jurisdiction has worked with the EU and the OECD for many years to implement measures to combat tax evasion and avoidance, including:

1. the EU Savings Directive.
2. the OECD Common Reporting Standards.
3. Economic Substance legislation.
4. Private Funds Law.
5. The Mutual Funds (Amendment) Law.

The final two measures listed above are intended to establish the widest possible regulatory coverage for funds in order to demonstrate that the transparency requirements have been adequately fulfilled. View DMS updates here.

# THE DMS MARKET REPORT

Keith Hazley released his first quarter 2020 "Market Report" in February this year when stock markets were hitting new highs and the U.S./China trade war was making progress. Keith discusses performance of the various markets during the last quarter as well as the public market scrutiny.

DOWNLOAD THE LATEST REPORT HERE

# 2020 Investment Funds Summit

## DMS 2020 Investment Funds Summit Highlights

Thursday the 23rd January 2020 saw the fourth annual DMS Investment Funds Summit held in New York. We were delighted to have over 500 attendees this year from both our global client base and key sectors of the industry.

CLICK HERE FOR IMAGE GALLERY

We were pleased to welcome to the event the following speakers:

**Ed Morse,** Managing Director, Global Head – Commodities, Citi Research
**Vuk Jeremic,** President of the Centre for International Relations and Sustainable Development
**Miriam Roiter,** Managing Director & Chief Technology Officer, Tudor Investment Corporation
**Valerie Szczepanik,** Head of Strategic Hub for Innovation and Financial Technology, SEC
**Ciaran Madden,** Consul General of Ireland, New York
**Bill Reeves,** Director Strategic Partnerships and Technology Innovations, Mathematica Policy Research
**Suzanne Brenner,** Partner, Chief Investment Officer, Private Wealth Management, Brown Brothers Harriman
**Sue Kolasa,** Managing Director, JP Morgan Asset Management
**Joseph Zidle,** Managing Director and Chief Investment Strategist, Private Wealth Solutions group, Blackstone

# DISTRESSED DEBT (RE)ACQUISITION

## IRISH ICAV STRUCTURING SOLUTION FOR OPTIMAL (RE)ACQUISITION OF DEBT

As you will no doubt be aware, the current market will generate distressed debt situations at a rapid rate. Looking at what happened in 2009 and 2010, this created a dynamic where many loans were sold out of performing portfolios at a discount. Sometimes this discount may have been overly prudent and in turn detrimental to the investors in the lending funds or banks. This lead to a number of protectionist measures such as CODI (Cancellation Of Debt Income) and Interest Deductibility criteria under the US Hybrid Payment Rules.

### THE CHALLENGE

We are aware of the challenges firms are seeing when looking to sell/purchase or transfer out distressed debt at discounted rates. Given this, DMS has developed a comprehensive, ready to go solution that can put distressed loans in a tax optimal structure in 2-4 weeks.

With the pressure mounting on loans to portfolio companies, direct lending and P.E. managers are using this opportunity to repurchase loans (or any form of outstanding debt) at a discount to the original issue price.

**This can cause significant issues for investors (fortunately, no new ones!), such as:**

- U.S. withholding on interest payments
- U.S. tax considerations on market discounts

**It can also cause problems for portfolio companies (and again, none are new!), such as:**

- Cancellation of Debt Income (CODI)
- Interest Deductibility under U.S. Hybrid Payment Rules

READ MORE ABOUT THE DMS SOLUTION

# A UNIQUE CHALLENGE

Many of our clients and friends reached out to DMS to ask us about "best practice" for Investment Managers in dealing with disclosure, reporting and human resource matters in relation to Covid-19.

Given the unprecedented and fast-moving nature of this new risk, we cannot say for sure if best practices have yet to be determined. We have, however, put together some observations on the response of some within the industry. These are based on conversations and communications with a selection of managers (located predominantly in the North-East U.S., across a range of strategies and asset and personnel size) over the past few days. It is important to keep in mind that risk varies significantly by location.

READ OUR COVID-19 UPDATES IN FULL

DMS

GOVERNANCE. RISK. COMPLIANCE.

20 YEARS 2000 - 2020