

## OCFI issues Proposed Regulation for the Oversight of Private Equity Funds

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### An McV Securities Practice Team Alert

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On September 23, 2022, the Office of the Commissioner of Financial Institutions (“OCFI”) issued a public notice notifying its intent to adopt the *Regulation for the Oversight of Private Equity Funds* (the “Proposed Regulation”). The Proposed Regulation would implement OCFI’s oversight and examination powers over private equity funds (the “Fund” or “Funds”) constituted under Puerto Rico Acts Nos. 185-2014, 60-2019, and 40-2020.

Below is a summary of the key provisions of the Proposed Regulation.

#### **Notice Requirements**

Funds would be required to submit the following to OCFI:

- If organized under Acts Nos. 185-2014 and 40-2020 - a copy of the notice of election of treatment filed with the Puerto Rico Secretary of Treasury (the “Secretary”) no later than five (5) days from the date of filing. They must also file a notice detailing the Fund’s organizational structure.
- If organized under Act No. 60-2019 - a copy of the decree application filed with the Puerto Rico Department of Economic Development and Commerce (“DDEC”) on the same day of filing.

Funds that have made the election or obtained a decree prior to the adoption of the Proposed Regulation will have thirty (30) days after the adoption date to submit the required documentation.

#### **Reporting Requirements**

Funds would also be required to submit to OCFI:

- Unaudited quarterly operation reports within thirty (30) days of the close of each quarter.
- Audited annual operation reports within ninety (90) days of the close of the fiscal year.

## OCFI issues Proposed Regulation for the Oversight of Private Equity Funds

### **Equity or Investment Offerings**

If a Fund intends to make equity or investment offering (the “Offering”) under the exemptions provided by Section 402 of the Puerto Rico Uniform Securities Act, it must file with OCFI a written petition for an administrative determination requesting the confirmation of the exemption’s applicability to the Offering.

### **Books and Records**

In addition to the books and records required by the Secretary and DDEC, a Fund shall maintain the following books, accounts, and/or documents, as applicable:

- All organizational documents and equity or investment subscription and contribution agreements executed by its investors.
- An electronic or printed registry of investors detailing the (i) name of the investor, (ii) physical, mailing address and contact information, (iii) employer account or social security number, (iv) date of each investment, (v) amount invested on the date of each investment, (vi) date of investment transfer or sales, (vii) the percentage of ownership attributable to the investor, (viii) for each taxable year in which an investment is made, an official certification issued by the Fund, printed on the Fund’s letterhead and signed by the managing partner or principal officer, accompanied with a statement including:
  - The Fund’s name and employer identification number;
  - If the Fund is a Puerto Rico-centered Investment Fund, Open Investment Fund, Private Equity Fund, or Puerto Rico Private Equity Fund, as applicable;
  - Name and employer identification number of the resident investor for whom the certification is issued; and
  - Amount of capital committed as an initial investment contributed during the taxable year for which the certification is issued, including any amount contributed after the completion of the taxable year.

### **Record Retention**

Each Fund or its registered investment advisor, or investment advisor shall (i) permanently maintain all books and records indicated above and (ii) maintain all books and records following liquidation or dissolution for no less than eight

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(8) years. The Proposed Regulation allows the electronic storage of records, subject to special requirements.

### **Member Meeting**

The Funds' annual member meeting shall be held in a central location at its place of business, or if an in-person meeting is not possible, then through electronic means. The meeting must be recorded, and minutes shall be taken.

### **Duty to Provide Information and Inspections**

Funds, administrators, managing partners, designated agents, and their officials and employees shall provide OCFI with all information requested in any requirement, examination and/or investigation related to the implementation of Acts Nos. 185-2014, 60-2019, and 40-2020, as applicable. Additionally, every Fund shall be subject to OCFI's oversight.

**Comments or recommendations to the Proposed Regulation can be submitted until October 24, 2022, through email to [reglamento@ocif.pr](mailto:reglamento@ocif.pr) or by mail to the following addresses:**

- División Legal Oficina del Comisionado de Instituciones Financieras Edificio Centro Europa Suite 600 1942 Ave. Ponce de León, San Juan, PR 00907-4024
- PO BOX 11855 San Juan, PR 00910-3855

A copy of the Proposed Regulation can be found [here](#).

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