COLLAS CRILL

Guide to private funds in the Cayman Islands

MARCH 2025

Introduction

The Cayman Islands is the leading jurisdiction for the offshore investment funds industry due to its combination of flexible and appropriate regulation, an approachable and effective regulator, professional service provider expertise, high reputation among investors and a tax neutral regime.

Investment funds established in the Cayman Islands fall into two broad categories: open-ended funds and closed-ended funds.

Generally, open-ended funds provide investors with voluntary redemption or repurchase rights, whereas closed-ended funds do not grant investors with those rights. Typically, open-ended funds will invest in liquid assets which can be readily realised to satisfy redemptions and closed-ended funds will invest in less liquid assets requiring time to liquidate/realise value and for a defined period of time.

This guide provides a summary of the regulatory regime that governs closed-ended investment funds that meet the definition of a private fund under the Private Funds Act (PF Act).

Overview of private funds

Legislation

The PF Act is the primary legislation regulating closed-ended investment funds in the Cayman Islands.

What is a 'private fund'?

The PF Act defines a private fund as a company, unit trust or partnership that offers or issues (or has issued) investment interests with the purpose or effect of pooling of investor funds with the aim of enabling investors to receive profits or gains from such entity's acquisition, holding, management or disposal of investments where the:

1. holders of investment interests do not have any day-to-day control over the acquisition, holding, management or disposal of investments; and
2. investments are managed as a whole by or on behalf of the operator of the private fund, directly or indirectly.

A fund that meets this definition and is not excluded or exempted under the grounds outlined below, will be required to register a private fund with, and be subject to regulation by, the Cayman Islands Monetary Authority (CIMA).

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Alternative investment vehicles (AIVs)

Where a private fund chooses to report its financial statements on a consolidated or combined basis with a Cayman-domiciled AIV, the AIV will be included in the registration of the Cayman-domiciled private fund by including AIV details in the registration form of the private fund and is not required to register separately with CIMA. However, the AIV is required to submit a separate annual return to CIMA. Where the main fund is a non-Cayman domiciled entity, the AIV is required to register with CIMA provided the private fund criteria are met.

Exclusions or exemptions from registration

While, as a practical matter, the definition of a private fund under the PF Act will likely encompass a vast majority of closed-ended fund structures (including most AIVs and co-investment vehicles), the PF Act expressly excludes various “non-fund arrangements” from its ambit.

Certain ‘non-fund arrangements' are deemed not to be private funds, such as a single family office, pension fund, securitisation special purpose vehicle, sovereign wealth fund and any fund whose investment interests are listed on a recognised stock exchange, including SPACs and IPOs. Accordingly, these vehicles are not required to register with CIMA under the PF Act.

A private fund that is not incorporated or established in the Cayman Islands and which makes an invitation to the public in the Cayman Islands to subscribe for the fund's investment interests through a person licensed under Securities Investment Business Act, and those interests are either listed on a stock exchange specified by CIMA, or the private fund is regulated by a regulator approved by CIMA, is not required to register with CIMA.

Single investor funds are not private funds, as there is no ‘pooling' of investor funds and open-ended funds which permit the redemption or repurchase of investor interests are not private funds.

When must a private fund register with CIMA?

Before receiving capital contributions for investment purposes

A private fund must register with CIMA before receiving capital contributions from investors for the purposes of investments (Contributions).

Within 21 days from accepting capital commitments for investment purposes

The PF Act also states that a private fund that receives Contributions is required to apply for registration with CIMA within 21 days from the date that it first accepted capital commitments from investors for the purposes of investment.

How the PF Act will apply to a private fund that has not received Contributions but that seeks to register with CIMA after such 21 day period has expired remains to be seen, but the prudent approach is to ensure registration before such date.

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Registration Process

To register a private fund with CIMA, the following documents must be submitted to CIMA via CIMA's online registration system:

- an online application form including details of the private fund, its service providers and its anti-money laundering and compliance officers
- a summary of the private fund's offering terms
- consent letters from the private fund's administrator (if applicable) and auditor (confirming that they act in such capacity on behalf of the private fund)
- the private fund's certificate of incorporation, certificate of registration or trust deed
- a structure chart
- the Electronic Transactions Act affidavit
- payment of the relevant application fee

Collas Crill would be happy to assist with preparing these drafts and submitting the application on behalf of your private fund.

Ongoing Regulatory Requirements

Audit

A private fund is required to have its accounts audited on an annual basis by a local Cayman auditor approved by CIMA. The private fund is also required to file the audited financial statements and a Fund Annual Return (FAR) with CIMA within six months of its financial year-end. For existing private funds, this is applicable for the 2020 financial year and for each financial year-end that follows.

Valuation

All private funds are required to conduct an asset valuation in accordance with its valuation policy. The valuation must be performed on an appropriate and consistent basis, at least annually, and in accordance with CIMA's valuation rules for private funds.

Cash monitoring

A private fund is required to have appropriate cash monitoring policies and procedures in place for its investment strategy and types of investments held. CIMA has issued rules and regulations related to establishing a cash monitoring policy. A private fund can choose to conduct the cash monitoring process internally, provided the function is independent from the portfolio management function or potential conflicts of interest are properly identified, managed, monitored and disclosed to investors, or it may outsource this process to an external third party.

Safekeeping of assets

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A private fund is required to appoint a custodian:

- to hold assets which are capable of physical delivery or capable of registration in a custodial account (except where that is neither practical nor proportionate given the nature of the private fund and the type of asset held); and
- to verify title to, and maintain records of, assets.

A private fund is not required to appoint a custodian if it is neither practical nor proportionate to do so and has notified CIMA thereof. Where a custodian is not appointed, a private fund is required to appoint an administrator or independent third party to perform the title verification.

Alternatively, the manager or operator of the private fund can perform the title verification, provided the title verification function is independent from the portfolio management function or potential conflicts of interest are properly identified, managed, monitored and disclosed to investors.

Where the title verification is not performed by an independent third party, CIMA may require the private fund to have its title verified by an appropriately professionally qualified independent third party.

Annual Fees

All private funds must pay the applicable annual CIMA fee (currently US$4,268) by 15 January of each year. If the annual fee is not paid by 15 January of each year, a penalty of 1/12 of the annual fee will be payable for each month or part of a month during which the annual fee and any penalty remains unpaid.

A fee of currently US$300 is payable each year in respect of each AIV, up to a maximum of 25 vehicles.

No Director registration/CIMA's four eye policy

The directors (or managers of LLCs) of private funds (or directors of the GP of a private fund) are not required to be registered under the Director Registration and Licensing Act.

CIMA has, however, extended its "four eye" policy which means that biographies and contact details for a minimum of two directors or managers are required to be included in the registration application for private funds that are registered as companies or LLCs, and in respect of a general partner or corporate director of a private fund.

AML compliance

All Cayman Islands investment funds, including private funds, are obliged to comply with Cayman Islands anti-money laundering, proliferation financing and terrorist financing (AML) legislation, including assessing and applying a risk-based approach to money laundering, proliferation financing and terrorist financing risks and compliance.

Private funds must designate natural persons to the roles of AML compliance officer, money laundering reporting officer and deputy money laundering reporting officer (AML Officers), after which performance of these functions can be delegated or outsourced. Details of the AML Officers are included in the registration filing with CIMA, described above.

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Automatic Exchange of Information

Cayman Islands funds are not directly subject to the US Foreign Account Tax Compliance Act (FATCA), however the Cayman Islands has introduced legislation implementing FATCA requirements for 'financial institutions' to identify and report certain US accounts to the Cayman Islands Tax Information Authority (TIA) on an annual basis.

The Cayman Islands has also enacted regulations (CRS Regulations) to implement the OECD common reporting standard on automatic exchange of information (CRS) into Cayman Islands law. Under the CRS Regulations, Cayman Islands 'reporting financial institutions' have to report information on the holders of 'reportable accounts' which are tax resident in 'reportable jurisdictions' and all Cayman Islands 'financial institutions' have to register with the TIA via its automatic exchange of information portal.

The majority of Cayman Islands funds, including private funds, fall within the definition of an 'investment entity' and are generally classed as a 'financial institution' for FATCA and CRS purposes.

As a result, private funds have information gathering, due diligence and reporting obligations. Ongoing obligations include the requirement to report the relevant information to the TIA on an annual basis. Reported information will then be sent automatically to the relevant home tax jurisdiction of the relevant account holders.

Corporate Governance

Private funds are required to comply with CIMA's rule on corporate governance for regulated entities (Rule) and associated statement of guidance for mutual funds and private funds (Guidance).

Beneficial Ownership

On 24 November 2023, the Cayman Islands Parliament approved the Beneficial Ownership Transparency Act, 2023, which was officially published on 15 December 2023 (Act).

The Act came into effect on 1 January 2025, removing the exemption that regulated funds in the Cayman Islands previously enjoyed. Private funds are now required to either establish a beneficial ownership register or determine if they are able to follow "alternative route to compliance".

The alternative route to compliance (if applicable) will require private funds to give their corporate services provider (typically the registered office) (CSP) the contact details of a contact person in the Cayman Islands that is licensed or registered under a regulatory law who can supply beneficial ownership information to the competent authority within 24 hours of a request.

Our team is available to assist you with compliance with the BOR and any questions you may have.

Supervision and enforcement

CIMA can require a special audit of a regulated private fund. Regulated private funds must also provide CIMA with such information and access to such records as CIMA requires.

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CIMA may apply to court to preserve the assets of a regulated private fund.

CIMA has the power in relation to a regulated private fund to revoke its registration, impose conditions upon it, require the substitution of a promoter or management, appoint advisers or persons to assume control of the affairs of the private fund or require the reorganisation or winding up of the private fund.

The auditor of a regulated private fund must immediately give written notice to CIMA if the private fund is, or is likely to become, unable to meet its obligations as they fall due, is carrying on or attempting to carry on business in a manner prejudicial to investors or creditors or is maintaining insufficient accounting records to allow its accounts to be properly audited.

CIMA also has the power under the Monetary Authority Act to impose significant administrative fines of up to CI$1 million (US$1.2 million) for each breach of certain provisions of the Anti-Money Laundering Regulations and other Cayman regulatory laws and regulations, including the MF Act and SIB Act. The level of an administrative fine will depend on various factors including whether the breach is committed by an individual or a body corporate and if the breach is classified as minor, serious or very serious.

Economic Substance

The International Tax Co-operation (Economic Substance) Act (ES Act) was introduced in the Cayman Islands in response to OECD's Base Erosion and Profit Shifting framework and related EU initiatives in relation to what are known as ‘Geographically Mobile Activities'.

The ES Act is supplemented by the Guidance Notes issued by the Cayman Islands Tax Information Authority (TIA) on Economic Substance for Geographically Mobile Activities.

Under the ES Act any ‘relevant entity' which carries on a ‘relevant activity' and receives ‘relevant income' in a financial period must satisfy the economic substance test in relation to that activity and make an annual filing with the TIA.

Investment funds

Under the ES Act an ‘investment fund' is not a ‘relevant entity' and therefore the ES Act is not applicable to such entities.

For further details, please see our client guide on Corporate Governance for Regulated Entities.

Supervision and enforcement

As the Authority regulating private fund registered pursuant to the PF Act, CIMA has certain reserve powers that it may execute at its discretion. For example:

- CIMA may require a special audit of a private fund. Private funds must also provide CIMA with such information and access to such records as CIMA requires.

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Contact

Collas Crill is committed to helping you navigate the regulatory requirements and registration. If you require further information or assistance regarding your mutual funds analysis and registration requirements, please contact a member of the team on the right hand side of this page.

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