



Cayman Islands Private Funds Law, 2020

Overview of regulatory implications and deadlines impacting Cayman Islands domiciled closed-end funds.

On 7 February 2020, the Cayman Islands Government enacted the **Private Funds Law, 2020** ("the Law"), which applies to Cayman Islands domiciled closed-end funds.

Funds falling within the definition of a "private fund" will be required to register with, and be regulated by, the Cayman Islands Monetary Authority ("CIMA"). Such requirement became effective from 7 February 2020.

The Law applies to both existing private funds, which were operating on or before 7 February 2020, and new private funds formed after this date. Under a transitional 6 months period arrangement, existing private funds must be registered by 7 August 2020.

This document outlines the key features and requirements of the new Private Funds Law, 2020. ➤



Entities captured under the Private Funds Law, 2020

The majority of closed-end funds are captured under this new law.

The definition of “Private Funds” includes any closed-end funds whereby:

- The fund is established for more than one investor;
- It is established as a company, unit trust or partnership;
- It offers, issues or has issued investment interests to investors, the purpose or effect of which is the pooling of investor funds with the aim of enabling investors to receive profits or gains from such investment activities;
- The investors do not have day-to-day control over the fund’s investment activities; and
- The investments are managed as a whole by or on behalf of the fund operator, either directly or indirectly.

Entities exempted

The Private Funds Law explicitly exempts those “non fund” arrangements. Some of these include:

- Securitization special purpose vehicles
- Joint ventures
- Proprietary vehicles
- Holding vehicles
- Structured finance vehicles
- Employee incentive schemes
- Sovereign wealth funds
- Single family offices
- Funds listed on a stock exchange

The Law is intended to regulate Cayman-domiciled closed-end private funds and certain AIVs that are pooling capital and offering/issuing interests to investors.

Registration requirements

CIMA is the primary financial services regulator of the Cayman Islands. CIMA regulates and supervises financial services, provides assistance to overseas regulatory authorities and advises the Cayman Islands government on financial services regulatory matters.

Effective 7 February 2020, private funds are required to submit an application to register with CIMA within 21 days after accepting capital commitments from investors and in any event, may not accept capital contributions from investors until the private fund is registered by CIMA.

Private funds that register following 7 August 2020 will incur an annual registration fee of CI\$3,500 (US\$4,268).

Registration checklist










- REEFS Application Form (APP-101-77);
- Certificate of Incorporation/Registration (as applicable);
- Constitutive Documents (Memorandum & Articles of Association/Trust Deed/Declaration of Partnership (as applicable);
- Offering Memorandum/Summary of Terms/Marketing Material (as applicable);
- Auditor’s letter of consent;
- Administrator’s letter of consent (if applicable);
- Structure Chart;
- Application Fee CI\$300 (US\$365).

i More information on **CIMA’s gazette** [here](#), or their **Investment Funds FAQ** [section here](#).



Ongoing Operating Obligations

The new Private Funds Law sets out the operating obligations as below:

-  **Directors:** Private funds must have a minimum of 2 directors for companies. In the case of general partners or corporate directors of a Private Fund, a minimum of 2 natural persons must be named in respect of the general partner or corporate director. Named directors must be compliant with the Director's Registration and Licensing Law.
-  **Audit:** Audited financial statements, issued by a Cayman Islands auditor approved by CIMA, must be submitted to CIMA within six months of a private fund's financial year end. For periods ending from 7 February 2020 through 31 July 2020, CIMA has granted an automatic extension of 3 additional months to submit audited financial statements and the Fund Annual Return (i.e. due 9 months from period end).
-  **Valuations:** Valuations must be carried out at least once a year. Valuations must be carried out by an independent third party, an administrator or the manager or operator of the fund provided that the valuation function is independent of the management function. If the valuation function is not independent of management, then any conflicts of interest must be disclosed. CIMA may waive the valuation requirements, either absolutely or subject to such conditions as it deems appropriate.
-  **Custody:** Private Funds must appoint a custodian to hold the custodial fund assets in segregated accounts. The custodian must verify that the private fund holds title to any other fund assets and maintain a record of those other fund assets. A fund may notify CIMA that it is neither practical nor proportionate to appoint a custodian having regard to the nature of the private fund and the type of assets it holds. In such scenario, the fund shall not be required to appoint a custodian but must appoint an independent third party or the manager or operator of the fund to carry out the title verification function. If this function is carried out by the manager or operator, it must be independent from the portfolio management function and potential conflicts of interest must be properly identified, managed, monitored and disclosed to investors.
-  **Cash Monitoring:** Private Funds must appoint a person to monitor its cash flow, ensure all cash has been booked in cash accounts opened in the name, or for the account of the private fund and ensure that all payments made by investors in respect of investments interests have been received. An independent third party such as an administrator or custodian may be appointed to perform this role. The manager or operator of the fund may also be appointed provided that this function is independent from the portfolio management function or that potential conflicts of interest must be properly managed, monitored, and disclosed to investors.
-  **Securities Identification:** Private Funds that regularly trade securities or hold them on a consistent basis must maintain a record of the identification codes of the securities it trades and holds and shall make this information readily available to CIMA upon request.
-  **Annual Fee:** an annual fee of CI\$3,500 (US\$4,268) - together with an additional fee of CI\$250 (US\$305) in respect of each alternative investment vehicles up to a maximum of 25 vehicles, as applicable - must be paid to CIMA by 15 January of each year.
-  **Annual Return:** The operator is responsible for completing a Fund Annual Return for each financial year. The approved auditor is responsible for submitting both the Fund Annual Return and the audited financial statements to CIMA within 6 months of the financial year end.
-  **Others:** there are some other operating obligations such as the appointment of a Money Laundering Reporting Officer (MLRO), Deputy Money Laundering Reporting Officer (DMLRO), and AML Compliance Officer (AMLCO), privacy and data protection requirements, FATCA and CRS, etc.

How Deloitte can help

Every manager has different needs and faces different challenges, with even the smallest fund often needing a wide range of services. Regardless of where your fund is in its life cycle – startup, ongoing operation or liquidation – Deloitte can provide the services to help you succeed.

Our team is composed of industry-leading experts, with a wealth of hands-on investment management experience.

In addition to providing a suite of accounting and consulting services, we can provide independent advice and recommendations on a range of other professional services available in the Cayman Islands, including law firms, fund administrators and fund directors.

We offer extensive expertise covering the entire spectrum of investment fund activities, and bring a wide range of combined local and global capabilities to help clients create maximum value.

We pride ourselves on our seamless approach to managing cross border arrangements with Deloitte's global network of member firms and clients.

Audit & Assurance

- Financial statement audits as a CIMA approved auditor
- Submit filings of Fund Annual Return and audited financial statements to CIMA
- Financial statement preparation
- Investment Return Performance Audit

Regulatory Advisory

- Regulatory compliance – AML, FATCA and CRS
- Risk management strategy development including addressing strategic, regulatory, financial and operational risks
- Cyber and Data Protection
- Internal controls assessment, design and testing

Tax

- Assistance with US federal, state and local, and international tax implications for investment funds
- Fund structuring and assistance with manager compensation arrangements
- Advising and assisting with the compliance for FATCA and CRS
- Advise on the transfer pricing implications on the management/ advisory fee arrangements
- Preparation of PFIC statements for offshore investment funds

Related Publications

- Guide to Establishing Investment Funds in the Cayman Islands
- Mutual Funds (Amendment) Law, 2020

 **More information on**
deloitte.com/ky/funds

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