



The Private Funds Law 2020 and Mutual Funds (Amendment) Law 2020

Private Funds Law 2020

On 7 February 2020, the Cayman Islands Government enacted the Private Funds Law 2020. It brings any Cayman Islands **closed-ended funds** which fall within the definition of a "private fund" the first time into the Cayman Islands Monetary Authority (CIMA) regulatory regime and requires registration with CIMA. Such requirement becomes effective since 7 February 2020.

This applies to both private funds which were carrying on business on or before 7 February 2020 and new private funds. **Under transitional 6 months period arrangement, existing private funds must be registered by 7 August 2020.** This newsletter outlines the key features and requirements of the new Private Funds Law 2020.





Which entities are captured under the new Private Funds law?

The definition of "Private Funds" captures any closed ended funds if:

- The funds are established for more than one investor;
- It is established as a company, unit trust or partnership;
- Its principal business is the offering and issuing to investors of its participating, non-redeemable investment interests; the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risk and 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 for reward based on the fund's assets, profits or gains.

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

Which entities are exempted?

The Private Funds Law explicitly exempts those "non fund" arrangements such as:

- securitization special purpose vehicles
- joint ventures
- proprietary vehicles
- holding vehicles
- structured finance vehicles
- employee incentive scheme
- sovereign wealth funds
- single family offices





New registration requirement with CIMA

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

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

After the end of transition period (i.e. 7 August 2020), a Private Fund may not accept capital

contributions from investors until it is registered by CIMA.

However, the Private Funds Law allows a private fund to engage in oral or written communications and enter into agreements (e.g. subscription agreements, side letters, etc.) with potential investors and accept investor's capital commitments prior to the submission of its registration application to CIMA.

Private Funds which register by 7 August 2020 will be liable to payment of a registration fee of US\$366 while Private Funds which register following 7 August 2020 will be liable to payment of annual registration fee of US\$4,634.

What documents/fees are required to register as a Private Fund under the Private Funds Law?

CIMA requires the following:

- 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














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.
-  **Audit:** Audited financial statements, signed-off 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 a transitioning private fund which registers with CIMA in August 2020 and has a financial year end of 31 December, it will need to file its audited accounts along with the Fund Annual Return ("FAR") with CIMA before 30 June 2021 in respect of its financial year ending 31 December 2020.
-  **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. 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 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 US\$4,268.29 (together with an additional fee of US\$304.88 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:** annual return filing to CIMA is required for each financial year.
-  **Others:** there are some other operating obligations such as appointment of Money Laundering Reporting Officer (MLRO), privacy and data protection requirements, FATCA and CRS, etc.



Mutual Funds (Amendment) Law 2020



On 7 February 2020, the Cayman Islands Government also enacted the Mutual Funds (Amendment) Law 2020. It brings **open-ended** funds formed in Cayman Islands that have 15 or fewer investors who have the ability to appoint or remove the operator of the fund now are required to register with CIMA. These open ended funds were previously exempted from CIMA registration under section 4(4) of the Mutual Funds Law.

Under the transitional period arrangement, mutual funds must be registered by 7 August 2020 accompanied by an initial application fee of US \$366. Mutual funds registering during the six-month transitional period shall not pay annual registration fee for 2020 and the first annual registration fee of US \$4,268 shall fall due in January 2021. Any fund registering on or after 8 August 2020 will be required to pay an annual registration fee of US \$4,268 for 2020.

Ongoing Operating Obligations



Directors: Funds must have a minimum of 2 directors for applicants that are 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 and these persons will be required to register under the Directors Registration and Licensing Law (Revised).



Audit: Audited financial statements, signed-off by a Cayman Islands auditor approved by CIMA, must be submitted to CIMA annually. The accounts need to be prepared and audited in accordance with International Financial Reporting Standards or US, Japanese or Swiss GAAP or GAAP of a non-high risk jurisdiction.



How Deloitte can help?



Audit and Assurance

- Issuance of Consent letter for CIMA registration
- Perform local audit assurance with Deloitte Cayman Islands' sign-off clearance



Regulatory Advisory

- Advise management on ongoing compliance obligations
- Perform independent valuation services on the investments of the funds



Tax

- Assist the management to review the fund structure from a tax perspective
- Carried interest planning
- Advise on the transfer pricing implications on the management/ advisory fee arrangements

If you have any questions in the interim or require any further information, please feel free to contact us.

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