

# Legal Insights

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## What are the key laws and rules that govern Cayman Islands' investment funds?

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### OPEN-ENDED FUNDS

The Mutual Funds Act (for open-ended funds) and the Private Funds Act (for closed-ended funds) are the two main statutes relevant to the regulation of investment funds in the Cayman Islands. The Cayman Islands Monetary Authority (“**CIMA**”) is the regulatory body responsible for compliance with these laws and related regulations and has broad powers of enforcement.

The Mutual Funds Act defines a mutual fund as “*a company, unit trust or partnership that issues equity interests, the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and enabling investors in the mutual fund to receive profits or gains from the acquisition, holding, management or disposal of investments but does not include a person licensed under the Banks and Trust Companies Act (2021 Revision)*...” The reference to “equity interests” means that debt instruments (including warrants, convertibles and sukuk instruments) are excluded and funds issuing such instruments will not be required to register with CIMA as a mutual fund.

#### **Limited Investor Funds:**

The scope of regulation extends to Cayman Islands incorporated or established master funds that have one or more CIMA-regulated feeder funds and hold investments and conduct trading activities. Changes to the Mutual Funds Act means that certain mutual funds, which were previously exempted from registration with CIMA because they had 15 investors or less, the majority of whom have the power to appoint and/or remove the operators of the investment fund (the operator being the directors, the general partner or the trustee, as is relevant given the corporate structure used for the fund) (“**Limited Investor Funds**”), are no longer exempt from registration with CIMA. Limited Investor Funds are now required to be registered with, and are regulated by, CIMA.

#### **Audit Requirement:**

Each CIMA registered mutual fund is required to have its accounts audited annually and filed by a firm of auditors on the CIMA approved list of auditors with CIMA within six (6) months of the end of each financial year of the mutual fund (along with a Financial Annual Return in CIMA's prescribed form).

**Single Investor Funds:**

Mutual funds that are established for a sole investor and do not involve the pooling of investor funds fall outside the regulatory framework of the Mutual Funds Act. Nonetheless, a mutual fund with a single investor can apply for voluntary registration to, among other things, benefit from the status of being a regulated fund.

Cayman Islands laws and regulations do not impose restrictions on, or prescribe rules for investment strategies of open-ended funds, or their use of leverage, shorting or other techniques.

**Registration of Directors:**

Directors of mutual funds structured as exempted companies, managers of investment funds structured as LLCs and directors of general partners of investment funds structured as an exempted limited partnership (in each case, wherever in the world these persons are located, not just Cayman Islands-based directors) regulated by CIMA are required to register with CIMA under the Directors Registration and Licensing Act (DRLA). The DRLA enables CIMA to verify certain information in respect of directors or managers of CIMA-registered funds. There is currently no requirement for registration of directors with CIMA under the DRLA who are directors of closed-ended funds that fall within the scope of the Private Funds Act. However, this may change in the future.

**CLOSED-ENDED FUNDS**

The Private Funds Act requires the registration of closed-ended funds (typically, investment funds that do not grant investors with a right or entitlement to withdraw or redeem their shares or interests from the fund upon notice) with CIMA. The Private Funds Act applies to private equity funds, real estate funds, venture capital funds, and the other types of closed-ended funds set up as Cayman Islands limited partnerships, companies (including SPCs), unit trusts and limited liability companies. The Private Funds Act also applies to non-Cayman Islands private funds carrying on business or attempting to carry on business in or from the Cayman Islands.

In addition to registration with CIMA, the Private Funds Act also imposes the following regulatory requirements to be met by private funds:

**Audit**

Each private fund is required to have its accounts audited annually and filed by a firm of auditors on the CIMA approved list of auditors with CIMA within six (6) months of the end of each financial year of the private fund (along with a financial annual return in CIMA's prescribed form).

**Valuation of assets**

A private fund must have appropriate and consistent procedures for the purposes of proper valuations of its assets, which ensures that valuations are conducted in accordance with the requirements in the Private Funds Act. Valuations of the assets of a private fund are required to be carried out at a frequency that is appropriate to the assets held by the private fund and, in any case, on at least an annual basis.

## Safekeeping of fund assets

The Private Funds Act requires a custodian: (1) to hold the private fund's assets that 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 assets held; and (2) to verify title to, and maintain records of, fund assets.

## Cash monitoring

The Private Funds Act requires a private fund to appoint an administrator, custodian or another independent third party (or the manager or operator of the private fund):

- to monitor the cash flows of the private fund;
- to ensure that all cash has been booked in cash accounts opened in the name, or for the account, of the private fund; and
- to ensure that all payments made by investors in respect of investment interests have been received.

## Identification of securities

A private fund that regularly trades securities or holds them on a consistent basis must maintain a record of the identification codes of the securities that it trades and holds and make this available to CIMA upon request.

## Anti-Money Laundering

All investment funds are required to comply with Cayman Islands anti-money laundering legislation and regulations, including appointing an anti-money laundering compliance officer, a money laundering reporting officer, and a deputy money laundering reporting officer. The Cayman Islands government and CIMA actively work with the European Union, the Organisation for Economic Co-operation and Development, the Financial Action Task Force and regulators in numerous jurisdictions to observe and maintain international standards on transparency, and good corporate governance.

## Further Assistance

This publication is not intended to be a substitute for specific legal advice or a legal opinion. If you require further advice relating to the matters discussed in this Briefing, please contact us. We would be delighted to assist.

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