

## New Cayman/BVI Registration Requirements for Private Funds and Open-ended Funds

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Earlier this year, the Cayman Islands introduced new registration requirements for:

- Closed-end funds known as “private funds; and
- Open-ended funds known as “limited investor funds” that were previously exempt from Cayman Islands Monetary Authority (CIMA) registration.

Private funds and limited investor funds have until **August 7, 2020** to register with CIMA. With only two months before the registration deadline, investment managers should be working with legal counsel now to analyze the new Cayman requirements and attend to filing requirements. Failure to register with CIMA could lead to a risk of investigation by CIMA and other enforcement action.

Similarly, the British Virgin Islands has also introduced new registration requirements for private investment funds that go into effect on **July 1, 2020**. Again, investment managers should be consulting with legal counsel now on compliance with this new law.

### Cayman Private Funds Law, 2020 (PF Law)

The PF Law applies to any “private fund”. A “private fund” is any vehicle whose principal business is the offering and issuing to investors of its investment interests, the purpose or effect of which is the pooling of investor funds with the *aim of spreading investment risks* and enabling investors to receive profits or gains from such vehicle’s investment activity where

- (a) the investors do not have day-to-day control over the vehicle’s investment activities, and
- (b) the investments are managed by or on behalf of the fund’s manager for reward on the vehicle’s assets, profits or gains.

There are certain “non-fund arrangements” that are excluded from the definition of a private fund including, but not limited to, joint ventures, proprietary vehicles, holding vehicles, individual investment management arrangements, structured finance vehicles, sovereign wealth funds and single-family offices.

A registration application will require: (i) an application form, (ii) certificate of incorporation/registration, (iii) constitutive documents, (iv) offering memorandum/summary of terms/marketing materials (as applicable), (v) administrator’s consent (optional), (vi) auditor’s letter of consent (if available), (vii) structure chart, and (viii) an application fee. The PF Law also has a number of ongoing compliance requirements including that audited financial statements must be signed-off by a Cayman Islands auditor and submitted to CIMA within 6 months of the fund’s financial year-end. The compliance requirements include filing an annual return (and fee), asset valuations, custody, cash monitoring, securities identification, and record retention. There is also a requirement for a minimum of two natural person as directors for companies (but no requirements for those directors to be registered or licensed under the Cayman Directors Registration and Licensing Law, as is the case for open-ended funds).

For further FAQ on the PF Law, please visit [here](#).

### Mutual Funds (Amendment) Law, 2020 (Amendment Law)

The Amendment Law provides for registration of limited investor funds that were previously exempt from registration because the fund’s equity interests were held by not more than fifteen investors (a majority of whom are capable of appointing or removing the operator of

the mutual fund.) Funds which are a “fund of one” remain outside of the scope of the new amendment and are not required to register.

A registration application requires the same type of documents as required for the PF Law application together with a confirmation that a majority in number of investors have the power to appoint or remove the operator. Again, there are requirements for the limited investor fund to have its accounts audited annually by a Cayman Islands based auditor and submitted to CIMA along with an annual return and fee.

Limited investor funds also need to have at least two natural persons as directors who are registered under the Cayman Directors Registration and Licensing Law 2014.

## **BVI Private Funds**

The BVI Securities and Investment Business Act, 2010 defines a “private investment fund” (**PIF**) as a company, partnership, unit trust or any other body incorporate, registered, formed or organized in the BVI or any other country, which:

- Collects and pools investor funds for the purpose of collective investment and diversification of portfolio risk; and
- Issues fund interests which entitle the holder to receive an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company, partnership, unit trust or other body.

A PIF needs to apply for “recognition” by the BVI Financial Services Commission by **July 1, 2020**.

In addition, there are ongoing compliance obligations including regarding appointing “authorized representatives,” “appointed persons”, directors, and anti-money laundering compliance. For further guidelines on this new law, please visit [here](#).

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