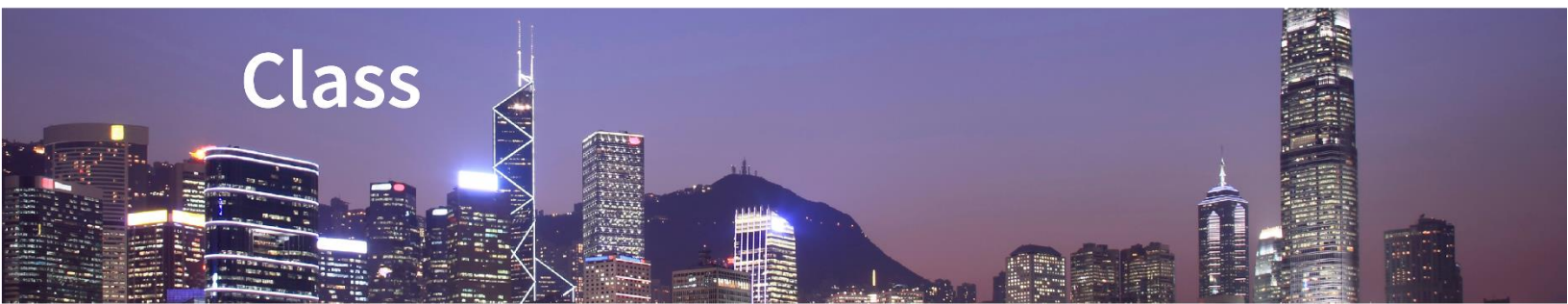


GUIDANCE NOTE

FUND REGISTRATION IN THE CAYMAN ISLANDS



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FUND REGISTRATION IN THE CAYMAN ISLANDS

INTRODUCTION

The Cayman Islands have become the leading offshore jurisdiction for the establishment of mutual funds and private funds. This phenomenal growth has been due in part to the use of innovative legislation and the absence of taxation and exchange controls. This, together with the presence of sophisticated and professional service providers has resulted in the jurisdiction's reputation for responsible supervision and regulation of funds.

The attraction of the Cayman Islands for offshore funds has been enhanced by the establishment of the Cayman Islands Stock Exchange (the "CSX") which has enabled funds to obtain listing status where required.

THE DEFINITION OF A MUTUAL FUND

The Mutual Funds Law (2020 Revision) (the "**Mutual Funds Law**") defines a mutual fund (or a hedge fund and between such definitions there is no distinction under Cayman Islands law) 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 investor risk and enabling investors to receive profits or gains from the acquisition, holding, management or disposal of investments. Equity interests are defined as a share, trust unit or partnership interest that carries an entitlement to participate in the profits or gains of the company, unit trust or partnership, as the case may be, and which may be redeemed or repurchased at the option of the investor.

The Mutual Funds Law applies to all open-ended funds (funds in which the investors have the right to redeem their interests at their option), except those specifically excluded from regulation.

THE DEFINITION OF A PRIVATE FUND

The Private Funds Law, 2020 (the "**Private Funds Law**") defines a private fund as a company, unit trust or partnership that offers or issues or has issued investment interests, 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 entity's acquisition, holding, management or disposal of investments, where

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

but does not include:

- (i) a person licensed under the *Banks and Trust Companies Law (2020 Revision)* or the *Insurance Law, 2010*;
- (ii) a person registered under the *Building Societies Law (2020 Revision)* or the *Friendly Societies Law (1998 Revision)*; or
- (iii) any 'non-fund arrangement'.



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The Private Funds Law applies to all closed-ended funds (funds in which the investors do not have the right to redeem their interests at their option), except those specifically excluded from regulation. The Private Funds Law also provides for 'alternative investment vehicles' and 'restricted scope private funds' and excludes 'non-fund arrangements' (as noted above).

TYPES OF REGULATED MUTUAL FUNDS AND REGULATED PRIVATE FUNDS

There are six types of mutual funds and two types of private funds that are subject to regulation and supervision under the Mutual Funds Law or the Private Funds Law, 2020 (the "**Private Funds Law**") by the Cayman Islands Monetary Authority ("**CIMA**"): -

1. **Registered Mutual Funds** - Streamlined registration procedures are available for mutual funds where:
 - (i) the initial minimum equity interest purchasable by an investor is US\$100,000; or
 - (ii) whose equity interests are listed on an approved stock exchange such as the CSX.

Registration requires filing the appropriate forms with CIMA together with a copy of the current offering document, consent letters from the auditors and the administrators and payment of the registration fee.

Where the fund is not a registered mutual fund and is not excluded from regulation, it must either apply for a mutual fund licence or apply to be regulated as an administered mutual fund.

2. **Licensed Mutual Funds** – A mutual funds licence is suitable for retail funds with a large and reputable promoter who does not intend to appoint a Cayman Islands administrator. In order to obtain a mutual fund licence, the fund is required to:
 - (i) file and keep on file with CIMA a current copy of the fund's offering document;
 - (ii) maintain a registered office in the Cayman Islands (or if a trust, a licensed trust company acting as trustee);
 - (iii) appoint a reputable administrator which need not be a Cayman Islands administrator; and
 - (iv) submit evidence to CIMA showing the soundness of the promoter, the expertise of the administrator and that the directors are fit and proper persons.

CIMA provides maintains principal supervisory oversight of the fund.

3. **Administered Mutual Funds** - To be regulated as an administered mutual fund, the fund must appoint a Cayman Islands licensed Mutual Fund Administrator to provide its principal office in the Cayman Islands.



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Although a majority of the supervisory functions which are performed by CIMA for licensed mutual funds such as verifying the reputation and suitability of the promoter and the administrator and ensuring compliance with the Mutual Funds Law is carried out by the Cayman Islands administrator, CIMA maintains a general supervisory and enforcement role with respect to administered mutual funds.

4. **Non-Cayman Islands Funds** – Funds that are established or incorporated outside of the Cayman Islands but whose management or administration is provided in the Cayman Islands may be required to be registered with CIMA in the Cayman Islands. If a corporate mutual fund is subject to regulation under the Mutual Funds Law, it must first register as a foreign company under the Companies Law (as Revised) before it can be licensed or registered as a mutual fund.
5. **Master Funds** – Master funds of regulated feeder funds which issue equitable interests which are redeemable at the option of the feeder fund must register with CIMA in accordance with the Mutual Funds Law.
6. **Limited Investor Funds** – Open-ended funds with 15 or fewer investors who have the ability to appoint or remove the operator of the fund referred to as “limited investor funds” are required to register with CIMA in accordance with the Mutual Funds Law.
7. **Private Funds** – Closed-ended private funds which fall under the definition of “private fund” pursuant to the Private Funds Law are registered to register with CIMA. The Private Funds Law also provides for ‘alternative investment vehicles’ and ‘restricted scope private funds’.
8. **Private Funds (Restricted Scope)** – A restricted scope private fund is a private fund that is an exempted limited partnership that is managed or advised by a person who is licensed or registered by CIMA or authorised or registered by a recognised overseas regulatory authority and in which all of the investors are non-retail in nature, being either high net worth persons or sophisticated persons. Registration and ongoing requirements for this new category of funds are yet to be released.

REQUIREMENTS FOR ALL REGULATED MUTUAL FUNDS

All Regulated Mutual Funds are required to:

1. Submit to CIMA a current copy of the fund offering document (other than a section 4(4) fund or a master fund). The offering document must describe the equity interests offered to investors in all material respects and must contain such information as is necessary to enable a prospective investor to make an informed decision as to whether or not to purchase the equity interests.
2. Submit to an annual audit and file accounts within six months of the end of the fund’s financial year. This will involve appointing an auditor in the Cayman Islands. All of the major accounting firms are represented on the Island and we would be pleased to provide you with recommendations.
3. Pay a prescribed annual registration fee.



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MASTER FUND REGISTRATION

Cayman Islands master funds are required to register with CIMA.

1. Which master funds must register?

Not all master funds are required to register with CIMA:

- The Mutual Funds Law only captures Cayman Islands master funds which issue equitable interests which are redeemable at the option of the feeder fund, therefore a master fund which allows redemptions only with the directors' or general partners' consent do not require registration.
- A "*master fund*" is defined as a mutual fund that is incorporated or established in the Cayman Islands that holds investments and conducts trading activity and has one or more regulated feeder funds. Therefore, a master fund where the feeder is not regulated by CIMA is also not itself required to register with CIMA.
- Master funds incorporated or established outside of the Cayman Islands are not required to register with CIMA.
- Intermediate funds that do not hold investments or conduct trading activity but instead pass such investments through to a master fund are not required to register with CIMA.
- A "*regulated feeder fund*" will be defined as a regulated mutual fund that conducts more than 51% of its investing through another mutual fund. Therefore master-feeder structures that have several master funds (including certain fund platforms) where the investment into any one master fund is less than 51% of its investing, are not required to register with CIMA.

2. Which master funds must register?

The master funds that are incorporated or established in the Cayman Islands that hold investments and conduct trading activity and have one or more regulated feeder funds. This definition includes mutual funds which issue equitable interests that are redeemable at the option of the feeder fund.

3. Registration

The registration process involves the filing of a certificate of incorporation and the applicable registration form as well as the payment of an annual fee. No separate offering document is required for the master fund and where the auditor and administrator of the master fund are the same as for the corresponding regulated feeder fund a separate letter of consent is not required.



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4. Continuing obligations to CIMA

Master funds are required to file with CIMA audited financial statements, signed off by a local auditor, within six months of its financial year end and payment of the annual fee.

REGISTRATION OF LIMITED INVESTOR FUNDS

The Mutual Funds (Amendment) Law, 2020 (the “**Amendment Law**”) amended the Mutual Funds Law. The primary effect of the Amendment Law was to bring within the scope of CIMA’s regulation, funds with 15 or fewer investors who have the ability to appoint or remove the operator of the fund; these funds were previously referred to as “exempted funds” and are now referred to as “limited investor funds”.

Limited investor funds are required to register with CIMA in the prescribed form, pay an annual registration fee, submit annual audited accounts audited by a Cayman Islands based auditor (and prepared in the same manner as those required under the Mutual Funds Law) and annual returns, inform CIMA of material changes to the information submitted as part of its registration application and retain appropriate accessible records. In addition, a limited investor fund that is structured as a company is required to have at least two natural persons acting as directors. The directors are required to register with CIMA under the Directors Registration and Licensing Law (Revised).

A certified copy of an extract of the limited investor fund’s constitutional documents needs to be filed with CIMA on registration showing that a majority in number of its investors are capable of appointing or removing the operator of the limited investor fund.

REGISTRATION UNDER THE PRIVATE FUNDS LAW

The Private Funds Law requires closed-ended private funds to register with CIMA. The Private Funds Law imposes extended administrative and operational requirements upon previously exempted closed-ended funds.

In addition to private funds, the Private Funds Law also provides for ‘alternative investment vehicles’ and ‘restricted scope private funds’.

An alternative investment vehicle is a company, unit trust, partnership or other similar vehicle that is formed in accordance with the constitutional documents of a private fund for the purposes of making, holding and disposing of one or more investments wholly or mainly related to the business of that private fund; and only has as its members, partners or trust beneficiaries, persons that are members, partners or trust beneficiaries of the private fund. Where International Financial Reporting Standards or the generally accepted accounting principles of the United States of America, Japan, Switzerland or a non-high risk jurisdiction permit consolidated or combined financial account reporting and a private fund chooses to report consolidated or combined financial statements with an alternative investment vehicle, the requirements under the Private Funds Law relating to audit, valuation, safe keeping, cash monitoring and identification of securities do not apply to such alternative



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investment vehicle.

A restricted scope private fund is a private fund that is an exempted limited partnership that is managed or advised by a person who is licensed or registered by CIMA or authorised or registered by a recognised overseas regulatory authority and in which all of the investors are non-retail in nature, being either high net worth persons or sophisticated persons. Details regarding the implications for registration and ongoing requirements for restricted scope private fund are expected in due course.

Private Funds do not include entities which constitute 'non-fund arrangements'. Non-fund arrangements are set out in the annex attached hereto.

The Private Funds Law sets out a registration process for private funds which involves the filing of prescribed details with CIMA and payment of an annual fee. The Private Funds Law does not require the filing of a full offering memorandum (or similar) in relation to a private fund or impose any requirements on the contents of a private fund's offering materials (if any). Where a private fund (a) makes any changes, or becomes aware of any changes, that materially affects any information submitted to CIMA under the provisions of the Private Funds Law; or (b) changes its registered office or the location of its principal office, the private fund shall within twenty-one days after making the change or becoming aware of the change, as the case may be, file with CIMA the details of the changes.

Operating Conditions for Private Funds

The Private Funds Law requires a private fund to ensure it has certain ongoing operating provisions in place relating to annual audits, annual returns, retention of records, valuation of assets, safekeeping of fund assets, cash monitoring and identification of securities which can be summarised as follows:

Annual audit of private fund

A private fund shall have its accounts audited annually by an auditor approved by CIMA. Accounts will need to be prepared in accordance with International Financial Reporting Standards or the generally accepted accounting principles of the United States of America, Japan or Switzerland or any non-high-risk jurisdiction.

Annual return

A private fund will, in respect of each financial year of the private fund, be required to submit an annual return in the prescribed form.

Retention of records

A private fund shall maintain its records in an accessible manner and in accordance with rules, statements of principle and guidance issued by CIMA under section 34 of the Monetary Authority Law (2018 Revision). This requirement includes an obligation to maintain a record of the identification codes of any securities that are regularly traded or held on a consistent basis.



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Valuation

A private fund shall have appropriate and consistent procedures for the purposes of proper valuations of its assets, which shall ensure that valuations are conducted in accordance with the requirements in the Private Funds Law. Valuations of the assets of a private fund shall 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.

Valuations of the assets of a private fund shall be performed by (a) an independent third party that is appropriately professionally qualified to conduct valuations in a non-high-risk jurisdiction or (b) the manager or operator of the private fund, or a person who has a “control relationship” with the manager of the private fund. If the valuation is undertaken by the latter of these options then it must be independent from the portfolio management function and potential conflicts of interest must be properly identified, managed, monitored and disclosed to investors. Alternatively, the valuation function could be undertaken by an administrator not falling under option (a) who is appointed by the private fund.

Safekeeping of fund assets

A private fund shall appoint a custodian to hold in custody, in segregated accounts opened in the name, or for the account, of the private fund, the custodial fund assets and verify that the private fund holds title to any other fund assets and maintain a record of those other fund assets.

A private fund is not required to appoint a custodian if it notifies CIMA that it is neither practical nor proportionate to do so, having regard to the nature of the private fund and the type of assets it holds.

In this scenario the private fund shall appoint either an administrator or another independent third party or the manager or operator, or a person with a control relationship with the manager of the private fund, provided that the verification function is kept separate and conflicts of interest are identified, managed and monitored in the same way that the valuation function is administered as set out above.

Cash monitoring

The Private Funds Law requires that monitoring of cash flows and checking of cash accounts and receipt of investor payments be carried out by any of the manager or operator of the private fund (subject to functional independence or conflicts management requirements), an independent administrator, independent custodian or other independent third party.

STRUCTURING OF FUNDS

There are three vehicles available in the Cayman Islands through which to operate a mutual fund or private fund:



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1. CORPORATE VEHICLES

Corporate mutual funds are commonly established as exempted companies, under the Companies Law (as Revised). Mutual funds may also be established as limited liability companies (“LLCs”) or segregated portfolio companies. Under the segregated portfolio structure separate and distinct “pots” or “pools” of assets (referred to as “**Portfolios**”) are created. The assets and liabilities of one Portfolio are legally segregated and protected from those of every other Portfolio and are also separate and distinct from a segregated portfolio company’s non-portfolio assets.

Typical structures include:

- (i) **Single/Two Class Structures** - either:
 - (a) a ‘single class structure’ of redeemable shares issued to all investors with all shareholders having the right to vote; or
 - (b) a ‘two or more share class structure’ with a small class of voting shares usually held by the manager or promoter and one or more classes of non-voting redeemable shares offered to investors at an initial subscription price and thereafter at net asset value per share.
- (ii) **Side by Side Structures** – where an investment manager typically provides services to both an onshore structure and an offshore structure (e.g. a United States domestic limited partnership, which receives investments from United States investors and a Cayman Islands exempted company, which receives investments from non-United States investors).
- (iii) **Umbrella Funds** - multiple classes of shares with separate investment funds established for each class of shares. The articles of association of these funds typically ‘ring fence’ assets and liabilities internally between classes of shares (i.e. the assets of one class of shares cannot be claimed by the holders of another class of shares in the event of a diminution in value of one class of shares). These arrangements however do not protect the fund as a whole from claims from outside creditors unless the fund uses the segregated portfolio structure.
- (iv) **Master/Feeder Funds** - usually established with a Cayman Islands exempted company as the master fund, into which the investment portfolios of separate feeder funds, established as domestic limited partnerships in the United States and as offshore corporate funds in the Cayman Islands, invest.

2. PARTNERSHIP STRUCTURES

Private funds are generally established as exempted limited partnerships which have certain advantages including the following:



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- (i) investment performance is allocated to each partner's capital account in proportion to his investment from the date of investment to the date of redemption or withdrawal; and
- (ii) incentive fees are calculated on each partner's capital account and are charged to that account, generally at fiscal year end and at each withdrawal date.

3. UNIT TRUSTS

A unit trust may be registered as a mutual fund if each trust unit is redeemable at the option of the investor. Provided that none of the investors of the unit trust are or are likely to become resident or domiciled in the Cayman Islands, they may also be registered as exempted trusts under the Trusts Law (as Revised) which will entitle them to apply for a 50 year tax undertaking.



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ANNEX NON-FUND ARRANGEMENTS

- *pension funds;*
- *securitisation special purpose vehicles;*
- *contracts of insurance;*
- *joint ventures;*
- *proprietary vehicles;*
- *officer, manager or employee incentive, participation or compensation schemes, and programmes or schemes to similar effect;*
- *holding vehicles;*
- *individual investment management arrangements;*
- *pure deposit-based schemes;*
- *arrangements not operated by way of business;*
- *debt issues and debt issuing vehicles;*
- *common accounts;*
- *franchise arrangements;*
- *timeshare and long-term holiday product schemes;*
- *schemes involving the issue of certificates representing investments;*
- *clearing services;*
- *settlement services; funeral plan contracts;*
- *individual pension accounts;*
- *structured finance vehicles;*
- *preferred equity financing vehicles;*
- *a fund of whose investment interests are listed on a stock exchange (including an over-the-counter-market) specified by CIMA by notice in the Gazette;*
- *occupational and personal pension schemes;*
- *sovereign wealth funds; and*
- *single family offices*



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GUIDANCE NOTE

This publication is for general guidance and is not intended to be a substitute for specific legal advice. Specialist advice should be sought about specific circumstances. If you would like further information, please contact:

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