

# Guidance Note

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Registration and Continuing Obligations of  
Private Funds in the Cayman Islands

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## Registration and Continuing Obligations of Private Funds in the Cayman Islands

### Introduction

This Guidance Note sets out the registration and continuing obligations of a private fund registered with the Cayman Islands Monetary Authority (“CIMA”) under the Private Funds Act, (2021 Revision) (the “PFA”).

### Registration

All private funds are required to register with CIMA. Registrations must be made through CIMA’s Regulatory Enhanced Electronic Forms Submission (“REEFS”) web portal. Stuarts has access to REEFs and will attend to registrations and ongoing filings for our clients. In order to register with CIMA, a private fund is required to file: (i) application form; (ii) application fee; (iii) certificate of incorporation/registration; (iv) constitutive documents (memorandum & articles of association/trust deed/declaration of partnership (as applicable); (v) offering memorandum/summary of terms/marketing material (as applicable); (vi) administrator’s consent letter; (vii) auditor’s consent letter; and (viii) structure chart.

### Ongoing Obligations

**Annual Fee.** There is an annual fee payable to CIMA of US\$4,268 in each year. Such fee must be paid by 15 January subject to penalties. There is also a fund annual return fee payable in each year of US\$366. Where applicable, there is also an annual fee of US\$305 payable in respect of each of the private fund’s alternative investment vehicles up to a maximum of 25 vehicles.

**Material Information.** 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 PFA; 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. CIMA will charge a filing fee of US\$122 for each filing.

**Operators.** Private funds are subject to the ‘four-eyes principle’ and require a minimum of two natural persons acting as directors of the fund where it is structured as a company or for the general partner of the fund where it is structured as a partnership.

**Operating Conditions.** The PFA 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. Accounts are required to be filed with CIMA within six months of the financial year end of the private fund.

- **Fund 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 Act (2020 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.
- **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 PFA. 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, monitored and managed in the same way that the valuation function is administered as set out above.

- **Cash monitoring.** The PFA requires that monitoring of cashflows 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.
- **Identification of securities.** Where applicable, a private fund that regularly trades securities or holds them on a consistent basis is required to maintain a record of the identification codes of the securities it trades and holds in accordance with the law and shall make this record available to CIMA upon request.



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**Penalties.** The PFA provides for a penalty of US\$25,000 for a private fund failing to file any changes to Material Information, comply with the Operating Conditions or file its Annual Audit. The operator of a private fund is responsible for compliance by the private fund with the PFA and an operator who contravenes the foregoing commits an offence and is liable on conviction to a fine of US\$25,000. Where a person operates a private fund in contravention of the PFA such person commits an offence and is liable on conviction to a fine of US\$122,000. In addition, CIMA has extensive power to impose a significant administrative fine of up to US\$1.2 million for a breach of the Anti-Money Laundering Regulations (Revised) of the Cayman Islands. It is also expected that private funds will be subject to additional administrative fines under other regulatory laws in the Cayman Islands once the relevant amendments are made to include private funds. The monetary amount of the administrative fine will depend on various considerations including whether the breach is committed by an individual or a body corporate and if the breach is classified as minor, serious or very serious.

**Powers of CIMA.** In addition if CIMA determines that a private fund is (i) or is likely to become insolvent, (ii) carrying on its business fraudulently, (iii) winding up its business in a manner that is prejudicial to its investors or creditors, (iv) not in compliance with the PFA or the Anti-Money Laundering Regulations (Revised), (v) being managed in a manner which is not “fit and proper” or (vi) operated or managed by a person who is not “fit or proper” to hold the position of operator, manager or officer, CIMA may take various punitive actions; including, canceling the private fund’s registration, imposing conditions on the fund, appointing a person to advise the fund on proper conduct and requiring removal and replacement of the promoter, directors, general partner or, manager of the fund. Any operator appointed by CIMA will have all the powers necessary to conduct the business and affairs of the fund in the best interests of the fund’s investors and creditors. The Grand Court may also grant CIMA authority to take such other action deemed necessary to protect the interests of the fund’s investors and creditors. CIMA may communicate directly with the investors of a private fund. Costs associated with enforcement, including appointment of advisors and operators, are expenses of the private fund. General partners, managers and other operators are responsible for compliance by the private fund with the PFA.

**CIMA Regulatory Measures.** In addition to the requirements set out under the PFA, a private fund is subject to the general regulatory oversight of CIMA which includes the requirement to comply with CIMA’s rules, statements of guidance, policies and procedures. Of note, private funds must comply with the Statements of Guidance on [Corporate Governance](#) and [Nature, accessibility and retention of records](#) each of which can be accessed by clicking on the relevant link. In addition, CIMA has published the Rule on the Contents of Marketing Materials for Registered Private Funds. This Rule sets out the specific content that should be included in the marketing materials (i.e. offering document(s)) for a registered private fund. Funds are expected to follow this CIMA Rule. If your marketing materials have not been updated recently, then you should consider updating them to ensure compliance.

**AEOI.** Where a private fund is a ‘financial institution’ for FATCA or CRS purposes it must comply with the automatic exchange of information requirements. Please see our Guidance Note on [Automatic Exchange of Information](#) for further information.

**AML.** All private funds must comply with the anti-money laundering regime in the Cayman Islands. Please see our Guidance Note on [AML for Funds](#) for further information.

**Data Privacy.** The Cayman Islands Data Protection Act, 2017 (“DPA”), came into force on 30 September 2019. A private fund is a ‘data controller’ and must comply with the data



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protection principles set out in the DPA when processing personal data. It must also ensure those principles are complied with where the personal data is processed on behalf of the data controller (e.g., by the administrator of the fund). Please see our [Guidance Note on Data Protection](#) for further information.



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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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