

Closed-ended private investment funds – a comparison (BVI and Cayman)

This matrix gives a comparison of closed-ended private investment funds and the private funds regimes in the British Virgin Islands and the Cayman Islands respectively as at its date of publication. Please contact a member of our team for further information if you are considering launching a BVI or Cayman closed-ended fund.

	BVI	Cayman
Key details		
Definition/Legislation	<p>Private investment fund (PIF) s.63A(1), Securities and Investment Business Act (as amended, SIBA):</p> <p><i>'a company, a partnership, a unit trust or any other body that is incorporated, registered, formed or organised, whether under the laws of the Virgin Islands or the laws of any other country, which:</i></p> <ul style="list-style-type: none"> <i>collects and pools investor funds for the purpose of collective investment and diversification of portfolio risk; and</i> <i>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'</i> 	<p>Private fund, s.2, Private Funds Act (as amended) (PFA):</p> <p><i>'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 investor² funds with the aim of enabling investors to receive profits or gains from such entity's acquisition, holding, management or disposal of investments, where —</i></p> <p>(a) <i>the holders of investment interests do not have day-to-day control over the acquisition, holding, management or disposal of the investments; and</i></p> <p>(b) <i>the investments are managed as a whole by or on behalf of the operator³ of the private fund, directly or indirectly,'</i></p> <p>but does not include certain licensees under Cayman Islands law or certain non-fund arrangements⁴</p>
Regulatory authority	BVI Financial Services Commission (FSC)	Cayman Islands Monetary Authority (CIMA)
Type of investor	Private offer ⁵ or 'professional investors' ⁶ only	No restrictions applicable
Duration	Unlimited (typical lifespan is 10 years)	Unlimited (typical lifespan is 10 years)

¹ Investment interest means 'a share, LLC interest, trust unit or partnership interest that – (a) carries an entitlement to participate in the profits or gains of the company, unit trust or partnership; and (b) is not redeemable or repurchaseable at the option of the investor, but does not include debt, or alternative financial instruments as prescribed under the Banks and Trust Companies Act (2020 Revision)'.

² Investor means 'the legal holder of record of an investment interest in the private fund but does not include a promoter, operator or proprietary investor'. Promotor means 'any person whether within or outside the Islands who causes the preparation or distribution of marketing materials in respect of the private fund or proposed private fund but does not include a professional adviser acting for or on behalf of such a person', operator has the meaning set out in the following footnote, and proprietary investor means— '(a) a person who is a current or past founder, principal, owner or stakeholder of a private fund; (b) any person who is providing, or in the same group as or affiliated with the person providing, directly or indirectly, the investment management or investment advisory services with respect to a private fund; or (c) a person who is a current or past founder, principal, owner or stakeholder of a person in paragraph (b)'.

³ Operator means '(a) where the private fund is a unit trust, a trustee of that unit trust; (b) where the private fund is a partnership, a general partner in that partnership; or (c) where the private fund is a company, a director of that company or, in the case of a company that is a limited liability company, a manager of that limited liability company'.

⁴ For more information on the non-fund arrangements under the PF Act, see the [Statement of Guidance: Non-Fund Arrangements \(November 2020\)](#) issued by the Cayman Islands Monetary Authority.

	BVI	Cayman
Minimum initial investment of investor	US\$100,000 ⁸ (if fund interests only issued to 'professional investors' unless 'exempted investors' ⁹)	None
Maximum net assets	None	None
Other restrictions of note	None	None
Launch		
Approval needed?	Yes, but possible to launch 21 days before receiving the FSC certificate so long as the application for recognition is made within 14 days of launch	Yes. An application for registration as a private fund must be filed with CIMA prior to the receipt by the private fund of capital contributions from investors for the purposes of investments
Approval timescale	Generally processed within 2-3 weeks of receipt of the application	Registration is effective from the date on which the application for registration is filed. Generally processed within 2-3 weeks of receipt of the application
Offering document or term sheet needed?	May use a term sheet or offering document. (Where not necessary or feasible, the application to the FSC must state the reason why the fund does not intend to issue an offering document or term sheet and how information relating to investments in the fund will be communicated to investors or potential investors) ¹⁰	May use a summary of terms or offering document, each of which must set out the information required by the Rule – Contents of Marketing Materials – Registered Private Funds (May 2020) issued by CIMA
Valuation policy needed?	<ul style="list-style-type: none"> • Yes, appropriate for the nature, size, complexity, structure and diversity of the fund and fund property¹¹ • Valuations of fund property to be undertaken at least on an annual basis 	<ul style="list-style-type: none"> • Yes, appropriate and consistent for the purposes of the proper valuation of fund assets • Must be written and disclosed in the fund's constitutional documents, marketing material or other form of investor communication typically used by the fund. Matters to be included are set out in the Rule – Calculation of Net Asset Values – Registered Private Funds (July 2020) issued by CIMA • Valuations of fund assets to be undertaken at least on an annual basis • Not required to be filed with CIMA

⁵ See footnote 7.

⁶ Professional investor means 'a person (i) whose ordinary business involves, whether for that person's own account or the account of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property, of the fund or (ii) who has signed a declaration that they, whether individually or jointly with their spouse, have net worth in excess of US\$1,000,000 (or its equivalent in another currency) and that they consent to being treated as a professional investor'.

⁷ An invitation to subscribe for, or purchase, fund interests issued by the PIF on a private basis includes an invitation which is made '(a) to specified persons (however described) and is not calculated to result in fund interests becoming available to other persons or to a large number of persons; or (b) by reason of a private or business connection between the person making the invitation and the investor' (section 63F(3), SIBA). The number of invitations made by the PIF to investors is a key factor in establishing compliance with the requirements for demonstrating whether invitations are made on a 'private basis'. Based on previous policy guidelines issued by the FSC, the PIF having a large number of investors (significantly more than 300) would cast doubt upon compliance with the spirit of 'private basis'. The FSC will take into account the actions and intentions of the person making the invitations including, where there are a number of investors, whether it can be demonstrated that the person made the invitations to specified persons and had no deliberate intention of making invitations to other persons.

⁸ Regulation 4(2), Private Investment Funds Regulations, 2019 (as amended) (PIF Regulations).

⁹ Exempted investor means '(a) the manager, administrator, promoter or underwriter of the fund; (b) any employee of the manager or promoter of the fund; and (c) such other class or description of persons as the FSC may, by notice published in the Gazette, specify as an exempted investor'.

¹⁰ In practice, this will mean that the necessary regulatory disclosures will need to be contained elsewhere in the fund's constitutional documents and/or subscription documents.

	BVI	Cayman
Other key documents/items	<ul style="list-style-type: none"> • Application form • Constitutional documents (eg memorandum and articles of association/ limited partnership agreement/ trust deed, specifying that (i) the fund is not authorised to have more than 50 investors; or (ii) an invitation to subscribe for or purchase, fund interests issued by the fund must be made on a private basis only; or (iii) fund interests shall be issued only to professional investors, with an initial investment of each professional investor, other than an exempted investor, not being less than US\$100,000) • Certificate of incorporation/formation/registration • Register of directors (if fund is a company) • Directors' CVs (if fund is a company) or CVs for each general partner, trustee or underlying individual where the director, general partner or trustee is a corporate entity • Any subscription documents¹² (need not be submitted to the FSC with application for recognition) • Any functionary agreements (need not be submitted to the FSC with application for recognition) 	<ul style="list-style-type: none"> • Application form • Structure chart • Offering document or summary of terms • Certificate of incorporation/formation/registration • Administrator's letter of consent (if applicable) • NAV calculator's letter of consent (if different to the administrator) • Auditor's letter of consent • At least 2 directors (if fund is a company) and their details including name, address, date of birth, etc. At least two individuals must be named in respect of a corporate director • At least 2 individuals must be named in respect of the general partner (if fund is a partnership) and their details including name, address, date of birth, etc. • Anti-money laundering officers (anti-money laundering compliance officer (AMLCO), money laundering reporting officer (MLRO) and deputy money laundering reporting officer (DMLRO)) and their CVs and details including name, address, date of birth, etc.
Management requirements	<ul style="list-style-type: none"> • At least 2 directors (1 must be an individual) (if fund is a company) • General partner (if fund is a limited partnership)¹³ • Trustee (if fund is a unit trust) 	<ul style="list-style-type: none"> • At least 2 directors (if fund is a company)¹⁴ • General partner (if fund is a limited partnership)¹⁵ • Trustee (if fund is a unit trust)
Functionaries and service providers	<ul style="list-style-type: none"> • No manager needed • No administrator needed • No custodian needed • No auditor needed (although required to submit audited financial statements unless the fund applies to the FSC for an exemption)¹⁶ • Authorised representative 	<ul style="list-style-type: none"> • No manager needed • No administrator needed • No custodian needed (although required to notify CIMA that fund does not have a custodian and it must be neither practical nor proportionate for the fund to appoint a custodian, having regard to the nature of the fund and the type of assets it holds) • Auditor needed (must be a CIMA approved local Cayman Islands auditor) • No authorised representative needed

¹¹ Fund property means '(a) where the fund is a BVI business company or a partnership, the assets of the fund; and (b) where the fund is a unit trust, the assets subject to the trust deed that constitutes the fund.' Matters to be included are set out in regulation 9, PIF Regulations.

¹² Where the PIF is only suitable for 'professional investors', these may include confirmation that the investor is a 'professional investor' and the minimum investment required.

¹³ A general partner is not required to have at least two directors (or equivalent officers).

¹⁴ At least two individuals must be named in respect of a corporate director.

¹⁵ A general partner is not required to have at least two directors (or equivalent officers) but at least two individuals must be named in respect of a general partner.

¹⁶ Paragraph 2(3A), Schedule 5, Financial Services (Miscellaneous Exemptions) Regulations, 2010 (as amended by the Financial Services (Miscellaneous Exemptions)(Amendment) Regulations 2019) (FSMER). Further detail is set out in the FSC's Fund Financials Guidelines published 31 December 2019 (FFG).

	BVI	Cayman
Other key requirements	<ul style="list-style-type: none"> Appointed persons¹⁷ (x3) who are responsible for undertaking the management, valuation and safe-keeping of fund property MLRO¹⁸ 	<ul style="list-style-type: none"> The valuation, title verification and cash monitoring functions must be performed by a custodian, administrator or other independent third party (as applicable), or by the manager (or a person who has a control relationship with the manager) provided that (a) such function is independent from the portfolio management function, or (b) potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors AMLCO, MLRO and DMLRO¹⁹ A fund that regularly trades securities or holds them on a consistent basis must maintain a record of the identification codes of such securities and make this record available to CIMA on request
Fees (excluding fund vehicle incorporation/formation, legal, and functionaries' fees)		
Application fee	US\$850	US\$366
Fee payable on initial registration/recognition	US\$1,200	US\$4,270
Annual renewal fee	US\$1,200	US\$4,270
Annual return fee	None	US\$366
Reporting requirements		
Financial statements	Audited financial statements must be filed no later than 6 months after the end of each financial year unless the FSC agrees an extension or exemption ²⁰	Audited financial statements must be filed no later than 6 months after the end of each financial year unless CIMA agrees an extension
Annual return	None	Annual return must be filed no later than 6 months after the end of each financial year unless CIMA agrees to an extension. The annual return must contain certain details of a fund's service providers, operations and financials ²¹

¹⁷ Such persons (individual or company) (x3) should have relevant expertise and experience and are responsible for undertaking the (a) management, (b) valuation and (c) safe-keeping of fund property (including its segregation) (regulation 6, PIF Regulations). An appointed person can be a director, partner or trustee of the fund and the safe-keeping arrangements may be satisfied by the appointment of a traditional custodian or prime broker. Where the fund does not propose to appoint a third-party custodian, the regulatory obligation around safekeeping of fund property will be fulfilled by one of the directors/ partners/ trustees assuming this responsibility (as the appointed person). The FSC should be given at least 7 days prior notice of the proposed appointment, although the FSC may agree to accept a shorter notice period (regulations 6(3) and (4), PIF Regulations). Ideally the appointed person responsible for undertaking the management of fund property should not be the same as the appointed person responsible for the valuation process. Where the PIF considers that these functions should be carried out by a single appointed person, it must (a) identify, manage and monitor any potential conflicts of interest that may arise; and (b) disclose these arrangements to its investors, along with details of how any potential conflicts of interest will be managed. Further detail is set out in the FSC's PIF Regime Guidelines published 31 December 2019 (PRG). Further details of the appropriate arrangements for PIFs for the safekeeping of fund property is set out in the FSC's Fund Safekeeping Arrangements Guidelines published 31 December 2019.

¹⁸ Business as a private investment fund within the meaning of SIBA is 'relevant business' under the Anti-money Laundering Regulations, 2008, as amended (AMLRs). Consequently, a PIF is required to comply with the provisions of the Anti-Money Laundering and Terrorist Financing Code of Practice, 2008 (as amended) and the AMLRs which require a fund to, among other things, appoint a MLRO. If the fund is a 'foreign financial institution' for the purpose of US FATCA, the FATCA responsible officer is often also appointed as the MLRO.

¹⁹ Business as a private fund is a 'relevant financial business' under the Proceeds of Crime Act (as amended). Consequently, a private fund is required to comply with the provisions of the Anti-Money Laundering Regulations (as amended) which require a fund to, among other things, appoint an AMLCO, MLRO and DMLRO.

²⁰ Further detail on the exemption and extension relating to audited financial statements is set out at paragraph 2(3A), Schedule 5, FSMER and regulation 10, PIF Regulations respectively and the FFG. The financial statements must be prepared in accordance with an approved accounting standard. No BVI auditor is required.

²¹ The annual return may be accessed via CIMA's online portal, known as REEFs.

	BVI	Cayman
Automatic Exchange of Information (AEOI) ²²	<ul style="list-style-type: none"> Register with the BVI International Tax Authority (ITA) for online reporting and report on an annual basis Identify and report certain reportable US accounts under US FATCA Report information on holders of reportable accounts tax resident in CRS reportable jurisdictions Implement AEOI policies and procedures Appoint individuals to AEOI roles including a FATCA responsible officer and a principal point of contact to liaise with the ITA 	<ul style="list-style-type: none"> Register with the Cayman Islands Tax Information Authority (TIA) for online reporting and report on an annual basis Identify and report certain reportable US accounts under US FATCA Report information on holders of reportable accounts tax resident in CRS reportable jurisdictions Implement AEOI policies and procedures Appoint persons to AEOI roles including a FATCA responsible officer (must be an individual), a principal point of contact (PPoC) to liaise with the TIA and an authorising person to give change notices to the TIA with respect to the PPoC
Economic substance	Report, through its registered agent, to the ITA on an annual basis to confirm whether or not it is carrying on a 'relevant activity' for the purposes of the BVI economic substance regime ²³	<ul style="list-style-type: none"> File an economic substance notification with the TIA annually (via the General Registry as a prerequisite to filing the annual return) to confirm whether or not it is carrying on a 'relevant activity' for the purposes of the Cayman Islands economic substance regime The definition of 'relevant activity' excludes the business of operating as an 'investment fund', however, private funds will still be required to make an economic substance notification in January each year
Key ongoing notification obligations		
Notification requirements	<p>Notification to the FSC at least 7 days before:²⁴</p> <ul style="list-style-type: none"> any proposed appointment of an appointed person <p>Notification to the FSC within 7 days of:</p> <ul style="list-style-type: none"> any resignation or termination of appointment of, or cessation to act as, an appointed person²⁵ <p>Notification to the FSC within 14 days of:</p> <ul style="list-style-type: none"> the appointment of a director, authorised representative or auditor a director, authorised representative or auditor ceasing to hold office any change in the address of the fund's place of business any material change in the nature/scope of the fund's business (if fund incorporated outside the BVI) any change to the fund's constitutional documents the issuance of an offering document/term sheet not provided to the FSC with the fund's application for recognition the amendment of any offering document/term sheet previously provided to the FSC any change to the fund's valuation policy 	Notification to CIMA of any change that materially affects any information submitted to CIMA under the PFA within 21 days after making the change or becoming aware of the change

²² On the assumption that the fund will be an investment entity and therefore a reporting BVI/Cayman financial institution.

²³ **Investment fund business** means '*the business of operating an investment fund.*' A PIF will fall within the definition of an investment fund for the purposes of the Economic Substance (Companies and Limited Partnerships) Act, 2018 (as amended), the **ES Act**). Investment fund business is not a relevant activity for the purposes of the ES Act. A PIF is required to notify its registered agent, in accordance with the Beneficial Ownership Secure Search System Act, 2017 (as amended), that it is not conducting any relevant activity for the purposes of the ES Act. Consequently, a PIF will not be subject to the substance requirements set out in the ES Act and the Rules on Economic Substance in the Virgin Islands issued by the ITA

²⁴ Although the FSC may agree to accept a shorter period of notice (regulation 6(4), PIF Regulations).

²⁵ The notice to the FSC must include a statement of the reason for the appointed person ceasing to act as such (regulation 7, PIF Regulations).