

# Continuing obligations of Cayman Islands private funds – Exempted limited partnerships

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This guide summarises the key continuing obligations of Cayman Islands closed-ended regulated funds (known as **private funds**<sup>1</sup>) that are established as exempted limited partnerships (ELPs), including the obligations to:

- pay an annual fee to the Cayman Islands Registrar of Exempted Limited Partnerships (the **Registrar**);
- pay an annual fee to the Cayman Islands Monetary Authority (**CIMA**);
- file audited financial statements and a Fund Annual Return Form (**FAR Form**) with CIMA;
- file an annual economic substance notification with the Cayman Islands Tax Information Authority (**TIA**);
- notify the Registrar and CIMA of any change to the fund's registered office;
- notify the Registrar of any material changes to the ELP's name, nature of business, duration or general partner;
- notify CIMA of any material changes to the information submitted in the registration application (**CIMA Form**) or the fund's offering document or prescribed details filed with CIMA (as applicable);
- maintain, at the registered office of the ELP, a record of the address at which the register of limited partners is maintained;
- comply with the Cayman Islands beneficial ownership regime by appointing a contact person for beneficial ownership purposes;<sup>2</sup> and
- comply with CIMA regulatory measures relating to corporate governance, internal controls and retention of records.

## Pay an annual fee to the Registrar

An ELP private fund must file an annual return and pay an annual fee to the Registrar. The annual fee for a regulated ELP is US\$1,585. The fund's registered office in the Cayman Islands will file the annual return with the Registrar and when fees are received from the fund, pay the annual fee on the fund's behalf. The fee is due in January of each year. Late fees will be assessed after 31 March of each year.

## Pay an annual fee to CIMA

A private fund must pay an annual fee to CIMA. The annual fee is currently US\$4,482. The fee is due by 15 January of each year and late fees will be assessed after that date. The registered office will pay the CIMA fees on the fund's behalf when the fees are received from the fund.

<sup>1</sup> See our guide to [Private funds in the Cayman Islands](#) for further details.

<sup>2</sup> See the 'Beneficial ownership' section below. Where the fund does not opt to appoint a contact person for beneficial ownership purposes, it will be required to identify and report certain particulars of its registrable beneficial owners to its corporate services provider.

## **File audited financial statements and FAR Form with CIMA**

A private fund must have its accounts audited annually and such accounts are required to be signed-off by a Cayman Islands auditor approved by CIMA. The audited accounts and FAR Form must be filed with CIMA within six months of the end of the fund's financial year.

## **Economic substance notification**

A private fund is required to file an economic substance notification with the TIA via the Registrar as a prerequisite to filing its annual return in January of each year. This notification confirms that the private fund is an 'investment fund'<sup>3</sup> for the purposes of the Cayman Islands economic substance regime and is the only obligation applicable to a private fund under the Cayman Islands economic substance regime.<sup>4</sup>

## **Notify CIMA of any material changes**

Any material changes to the information contained in the CIMA Form, the offering document (where applicable) or the registered office or principal office must be filed with CIMA within 21 days of the change.

CIMA requires a minimum of two natural persons to be named in respect of a general partner.

## **Notify the Registrar of any material changes**

Any changes made to the following information for the ELP must be filed with the Registrar within 60 days of its occurrence:

- name;
- general nature of its business;
- registered office address;
- duration; or
- general partner's name and address.

The removal, replacement or admittance of a general partner must be notified to the Registrar within 15 days and the relevant change is not effective until that notice has been filed.

## **Maintenance of registers**

Under the Exempted Limited Partnership Act (as amended), the general partner must maintain or cause to be maintained:

- a register of limited partners (to be updated within 21 days of the date of any change) containing:
  - the name and address of each person who is a limited partner;
  - the date on which a person became a limited partner; and
  - the date which a person ceased to become a limited partner;
- a record at the registered office of the ELP of the address at which the register of limited partners is maintained (to be updated within 21 days of the date of any change);
- a record of the amount and date of the contribution or contributions of each limited partner and the amount and date of any payment representing a return of the whole or any part of the contribution of any limited partner (both of which must be updated within 21 days of any change); and
- a register of security interests in respect of partnership interests in the ELP.

The register of limited partners is open to inspection by any partner subject as may be provided in the limited partnership agreement and by non-partners with the consent of the general partner. The record of contributions is open to inspection by any person, with the consent of the general partner and the register of security interests is open to inspection by any person.

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<sup>3</sup> The Guidance on Economic Substance for Geographically Mobile Activities provides that the TIA will regard private funds registered with CIMA pursuant to the Private Funds Act (as amended) as investment funds for the purposes of the Cayman Islands economic substance regime.

<sup>4</sup> As 'investment fund business' (meaning the business of operating as an 'investment fund') is excluded from the definition of 'relevant activity' for the purposes of the Cayman Islands economic substance regime, private funds are exempt from the requirement to file an economic substance return.

## Beneficial ownership

Private funds registered with CIMA must ensure that they comply with the Cayman Islands beneficial ownership regime. The fund may do so by opting to appoint of a contact person who is responsible for responding to requests for beneficial ownership information received from the competent authority. The contact person must be a licensed fund administrator or another person licensed or registered with CIMA.

If a private fund does not opt to appoint such a contact person, the fund is required to identify and report certain particulars of its registrable beneficial owners to its corporate services provider who will use this information to establish and maintain the beneficial ownership register at the registered office. For more information, see our guide to [The Cayman Islands beneficial ownership regime](#).

## Regulatory measures

Some key regulatory measures<sup>5</sup> issued by CIMA for private funds are set out below.

- The Rule on Corporate Governance for Regulated Entities and Statement of Guidance on Corporate Governance for Mutual Funds and Private Fund which require a regulated private fund to establish and maintain a corporate governance framework and oblige the fund's governing body to:
  - properly oversee the activities and affairs of the regulated fund and its service providers;
  - adhere to the individual and collective duties prescribed by these corporate governance measures;
  - suitably identify, disclose, monitor and manage all conflicts of interest on an annual basis;
  - appropriately manage and mitigate the fund's risks;
  - hold regular meetings, at least annually; and
  - maintain internal documents which fully record the proceedings of meetings of the governing body and/or other determinations;
- The Rule and Statement of Guidance on Internal Controls for Regulated Entities which requires a regulated private fund's governing body to:
  - ensure that an adequate and effective system of internal control is established, documented and maintained;
  - approve and periodically review the overall business strategies and significant policies of the regulated entity;
  - understand the material risks faced by the regulated entity;
  - approve the organisational structure and ensure that senior management is monitoring the effectiveness of the internal control system; and
  - demonstrate independence from senior management and exercise oversight of the development and performance of internal controls (where this is not reasonably possible, policies and procedures must be in place to identify and manage actual or perceived conflicts of interests); and
- The Statement of Guidance on Nature, Accessibility and Retention of Records which requires a regulated private fund to keep, for a minimum period of five years, up-to-date:
  - records of books of accounts and other financial affairs; and
  - records and policies in relation to accounting, organisation, employees, administration, risk management, incorporation, shareholder/board meeting minutes and resolutions, client communication, service providers, customer due diligence and annual returns made to CIMA..

The regulatory measures set out above should be complied with in a manner which is commensurate with the size, complexity, structure, nature of business and risk profile of the fund's operations.

## CIMA's supervisory powers

CIMA has various supervisory powers with respect to private funds to ensure the direction and management of funds are conducted in a fit and proper manner and may at any time instruct a private fund to have its accounts audited and submitted to CIMA. In addition, CIMA may request the private fund

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<sup>5</sup> <https://www.cima.ky/investment-funds-regulatory-measures>

to provide CIMA with such information or explanation in respect of the fund as CIMA may reasonably require to enable it to carry out its duties under the Private Funds Act (as amended).

CIMA has a number of enforcement powers under the Private Funds Act including the ability, in certain circumstances, to:

- cancel a private fund's registration;
- impose conditions or further conditions on a private fund's registration;
- require the substitution of any promoter or operator of a private fund;
- appoint a person to advise the private fund on the proper conduct of its affairs; or
- appoint a person to assume control of the affairs of the private fund.

A private fund carrying on or attempting to carry on business in or from the Cayman Islands without a valid registration application commits an offence under the Private Funds Act and is liable on conviction to a fine of US\$121,951. Operators of private funds are liable on conviction to a fine of US\$24,390 for carrying on business as a private fund contrary to the Private Funds Act.

In addition, administrative fines may be imposed by CIMA for breaches of the Private Funds Act and certain CIMA rules under the Monetary Authority (Administrative Fines) Regulations (as amended). Please refer to our guide on [The Cayman Islands administrative fines regime](#) for further information.

### **Asset valuations, safekeeping of assets and cash monitoring**

The Private Funds Act also imposes requirements regarding asset valuations, safekeeping of assets and title verification, cash monitoring and, where applicable, identification of securities. Asset valuations, safekeeping and cash monitoring are required to be conducted by an independent third party but may also be conducted by the fund's manager or operator, provided that the relevant function is independent from the portfolio management function or the potential conflicts of interest are identified, managed, monitored and disclosed to investors.

### **Anti-money laundering requirements**

The Cayman Islands anti-money laundering and countering terrorist financing (AML) regime requires private funds to maintain AML procedures as appropriate to the size of the fund. The requirements include:

- adoption of a risk-based approach to monitor investors and financial activities, together with adequate systems to identify risk (including checks against all applicable sanctions lists) in relation to persons, countries and activities of the private fund;
- procedures for:
  - investor identification and verification;
  - risk-management;
  - record-keeping;
  - suspicious activity reporting;
  - monitoring, and testing the systems for, compliance with AML and proliferation financing regulatory requirements; and
- other internal control and communication procedures (eg a risk-based independent audit function).

Private funds are also under an obligation to appoint named individuals to act as the anti-money compliance officer (AMLCO), money laundering reporting officer (MLRO) and deputy money laundering reporting officer (DMLRO). The AMLCO and MLRO may be the same individual.

The role of a fund's AMLCO is to oversee the AML compliance function and ensure the effectiveness of the fund's AML systems, its adherence to applicable AML legislation/guidance and the day-to-day operation of the fund's AML policies and procedures. The MLRO is the point of contact for all internal suspicious activity reports and will in turn report suspicious activity to the competent authorities. The DMLRO's role is to discharge the MLRO functions in the absence of the MLRO.

### **Automatic exchange of financial information**

The Cayman Islands has automatic exchange of information regimes in place for reporting under the US Foreign Account Tax Compliance Act (FATCA) and the OECD's common reporting standard (CRS). Cayman

Islands vehicles classified as 'Cayman Reporting Financial Institutions' are subject to registration, reporting, due diligence and administrative obligations. In addition to the registration and reporting required:

- each 'Cayman Reporting Financial Institution' under CRS is also required to establish, maintain and implement written policies and procedures, even where the performance of CRS obligations has been delegated to a third party;
- each entity required to register with the Tax Information Authority (**TIA**) must appoint a 'principal point of contact' (**PPOC**) for the TIA to communicate with and a person authorised to notify the TIA of any changes to the PPOC; and
- each entity registering with the United States' Internal Revenue Service must appoint a 'Responsible Officer' who provides certifications regarding compliance with FATCA.

### **Pay an annual fee to CIMA to register under the Securities Investment Business Act**

If a private fund's investment manager is a Cayman Islands entity (or is registered in the Cayman Islands) and carries on securities investment business, the investment manager must be licensed or registered as a 'registered person' under the Securities Investment Business Act (as amended). In order to register as a registered person, a completed application must be submitted to CIMA, via an online portal, together with the registration fee of US\$6,098 and any other information requested by CIMA. The fee is due by 15 January of each year and late fees will be assessed after that time. Please refer to our guide on [Registered persons under the Securities Investment Business Act](#) for further information.

### **Contacts**

A full list of contacts specialising in investment funds and regulatory law can be found [here](#).