

# Private funds in the Cayman Islands

Last reviewed: June 2023

---

## Introduction

The Cayman Islands is the largest domicile for private equity funds outside of the US. As at Q1 2023, there were 16,129 private funds registered with the Cayman Islands Monetary Authority (CIMA) under the Private Funds Act (as amended) and 12,963 mutual funds and other open-ended funds registered with CIMA under the Mutual Funds Act. For more details on the Cayman Islands mutual funds and other open-ended funds, please see our Guide on [Mutual Funds in the Cayman Islands](#). The remainder of this guide will focus on closed-ended private investment funds, referred to as '**private funds**'.

The success of the jurisdiction has, to a large extent, been based on the sophistication of its legal regime which has constantly evolved to keep pace with the global regulatory environment and the demands of its key stakeholders. To this end, the Cayman Islands introduced a regulatory regime for 'closed-ended' private funds in February 2020 to further strengthen investor confidence and to ensure it remains the preeminent jurisdiction for fund formation.

The term 'private equity fund' commonly denotes a non-retail fund investing in illiquid assets and, whilst used most frequently in the context of a typical buyout fund, covers a range of funds including real estate funds, venture capital funds, infrastructure funds, credit opportunity and other debt funds, secondary funds and funds of funds.

Private equity/closed-ended funds established in the Cayman Islands normally take the form of exempted limited partnerships (ELP), which will be the focus of this guide, although private funds may also be formed as companies or unit trusts.

## Regulation of private funds

The Private Funds Act is the principal legislation relevant to the regulation of private funds in the Cayman Islands. All private funds must comply with relevant anti-money laundering legislation and regulation. CIMA is the regulatory body responsible for compliance with these regulations and has broad powers to ensure the protection of investors.

The Private Funds Act requires private fund vehicles to register with the CIMA within 21 days of accepting capital commitments from investors but, in any event, prior to the fund accepting capital contributions from investors for the purposes of investments.

## Definition of 'private fund'

The Private Funds Act defines a **private fund** as a vehicle 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 the vehicle's investments, where: (a) the investors do not have day-to-day control over those investments; and (b) the investments are managed by or on behalf of the fund's operator.

It should be noted that the definition of **investor** explicitly excludes any 'promoter'<sup>1</sup>, operator<sup>2</sup> or proprietary investor<sup>3</sup> of the private fund.

### **Non-fund arrangements**

The definition of 'private fund' excludes certain **non-fund arrangements** which are listed in the Private Funds Act and further defined in CIMA's Statement of Guidance on Non-Fund Arrangements<sup>4</sup>. These include, amongst others, pension funds, securitisation SPVs, joint ventures, proprietary vehicles, holding vehicles, individual investment management arrangements, debt issues and debt issuing vehicles, structured finance vehicles, sovereign wealth funds and single family offices.

### **Application for registration**

An application for registration is made via CIMA's online filing portal. The application will need to include:

- application form;
- application fee – US\$366;
- certificate of incorporation/registration (as applicable);
- offering memorandum/summary of terms/marketing materials (as applicable);
- administrator's letter of consent (as applicable);
- auditor's letter of consent;
- exemption letter (if the private fund registers with CIMA more than 6 months after the date of incorporation/formation in the Cayman Islands); and
- structure chart.

All private funds are required to pay an annual registration fee of US\$4,270 at the time of registration.

### **Contents of offering document**

Private funds registering with CIMA must file an offering memorandum, a summary of terms or marketing materials (the **Offering Document**) with CIMA which outline the terms of the offer to investors. Any Offering Document filed with CIMA must contain the information required under the CIMA Rule on the Contents of Market Materials for Registered Private Funds<sup>5</sup>.

Broadly speaking, the Rule requires the Offering Document include reference to regulation under the Private Funds Act and contain (amongst others) details of:

- investment objectives/strategy;
- initial term and (if applicable) minimum investment;
- general partner; investment manager/advisor and principals;
- NAV calculation agent/valuation agent, registrar and transfer agent and any other service providers;
- financial year end and accounting principles to be adopted in financial statements;
- any material risks and conflicts of interests; and
- anti-money laundering measures.

---

<sup>1</sup> **Promoter** means any person in or outside of the Cayman 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.

<sup>2</sup> **Operator** means the general partner where the private fund is an ELP

<sup>3</sup> **Proprietary investor** means (i) a person who is a current or past founder, principal, owner or stakeholder of a private fund; (ii) 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 (iii) a person who is a current or past founder, principal, owner or stakeholder of a person in (ii) above.

<sup>4</sup> CIMA's Statement of Guidance on Non-Fund Arrangements can be found at [here](#).

<sup>5</sup> The CIMA Rule on Contents of Marketing Materials can be found at [here](#).

## Timing

The registration date on the private fund's registration certificate will be the date that the complete application has been received by CIMA (ie, the submission date when the private fund submitted all documents, fees and information).

## Continuing obligations for private funds

The Private Funds Act includes the following ongoing obligations to:

- inform CIMA of any material changes to the information submitted in the registration application, the fund's offering document<sup>6</sup> or the prescribed details filed with CIMA (as applicable), or of a change in the fund's registered or principal office, within 21 days of making the change;
- pay an annual fee to CIMA by 15 January each year;
- file a Fund Annual Return Form with CIMA;
- have the fund's accounts audited annually by a CIMA-approved auditor, together with an obligation to file audited accounts with CIMA within 6 months of the fund's financial year end;
- file an annual economic substance notification with the Cayman Islands Tax Information Authority;
- pay an annual fee to the Cayman Islands Registrar; and
- retain records in accordance with CIMA's published rules, guidance and policies.

A minimum of two natural persons are required as directors for companies or to be named in respect of a general partner or corporate director. There is no requirement for directors to be registered or licensed under the Directors Registration and Licensing Act, as is the case for directors of open-ended funds.

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.

Private funds are also required to comply with Cayman Islands anti-money laundering legislation and automatic exchange of financial information requirements. For further details of these and other on-going obligations for private funds, please refer to our guide on [Continuing obligations for Cayman Islands private funds](#).

## Exempted limited partnerships

An ELP is the typical vehicle of choice for a private equity fund domiciled in the Cayman Islands and will be formed under, and subject to, the Exempted Limited Partnership Act (as amended). This Act adopts principles similar to those enshrined in the Delaware Revised Uniform Limited Partnership Act and these similarities to the Delaware model make the ELP particularly attractive to managers and investors in the US. For further details, please see our guide on [Cayman Islands exempted limited partnerships](#).

## Side letters

The general partner of an ELP may enter into side letters<sup>7</sup> with individual investors to provide for contractual arrangements in addition to those contained in the limited partnership agreement (LPA). It is common for investors entering into side letters to demand most favoured nation (MFN) clauses guaranteeing them the same rights extended to other recipients of side letters. These arrangements are unobjectionable under Cayman Islands law, but the normal steps must be taken to ensure that the terms of a side letter (and any MFN arrangements) are not in contravention of, or inconsistent with, the terms of the

---

<sup>6</sup> CIMA understands that a number of private funds in existence when the Private Funds Act came into effect did not have a separate Offering Document and that the terms of the offer were outlined in the constitutive documents of the private fund. In such instances, legacy private funds must file any subsequent changes to their constitutive documents with CIMA.

<sup>7</sup> For further details, please see our guide on [Private equity side letters](#).

LPA. Nothing in the side arrangements can be allowed to prevent the general partner from discharging its obligation under Cayman Islands law to act at all times in the good faith and (subject to any express provisions of the LPA to the contrary) in the interests of the ELP.

Consideration should be given to making specific provision in the LPA for the general partner to enter into side arrangements with individual investors within specified parameters. In all cases, Cayman Islands legal advice should be sought.

### **Legal opinions**

A legal opinion will typically be required from the fund's onshore and offshore legal advisors. The offshore opinion will be addressed to the investors and will cover:

- the valid formation and good standing in the Cayman Islands of the ELP and its general partner;
- the ability of the ELP (acting by the general partner) to enter into the LPA and other documentation;
- the limited liability status of the limited partners;
- the enforceability of the LPA and other documentation; and
- the enforceability of the obligations thereunder of the general partner.

### **Taxation**

The Cayman Islands has no direct taxation of any kind. There is no income, corporation, capital gains, withholding taxes or death duties. Under the terms of relevant legislation it is possible for ELPs to apply to the Cayman Islands Government for a written undertaking that they will not be subject to direct taxation for a minimum period which, in the case of ELPs is 50 years from the undertaking being given.

### **Contacts**

A full list of contacts specialising in private equity can be found [here](#).