

Article

The Cayman Islands Private Funds Law – FAQs for Lenders

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The Cayman Islands Private Funds Law, 2020 (the “PF Law”) has been an increasingly prevalent topic in fund finance transactions since its introduction in February of this year.

As transactions have arisen (new subscription lines or amendments to existing facilities), most lenders have sought to directly address the implications of the PF Law. This has primarily occurred via the addition of affirmative covenants or other contractual provisions to the loan documents in respect of the requirement for private funds to register with the Cayman Islands Monetary Authority (CIMA), which is of material significance to lenders to such funds.

As a result of the negotiation of these provisions (primarily in respect of registration timing, evidence of registration and ongoing compliance requirements) we are seeing a number of similar queries related to these points. The below is a summary of the questions we are most frequently receiving from lenders and their legal counsel and our responses to them.

What is required for a private fund to ‘register’ with CIMA?

The CIMA registration process is extremely straightforward. A private fund simply authorizes its Cayman Islands legal counsel to upload the following documents to the CIMA secure online system (known as “REEFS”) along with submitting the required application fee:

- REEFS Application Form
- Certificate of Incorporation/Registration (as applicable)
- Constitutive Documents (Memorandum & Articles of Association/Trust Deed/Declaration of Partnership, as applicable);
- Offering Memorandum/Summary of Terms/Marketing Material (as applicable)
- Auditor’s letter of consent (if appointment has been finalized by time of registration)
- Administrator’s letter of consent (if applicable)
- Structure Chart

What happens next? How long does it take for a private fund to register with CIMA?

The application is reviewed by CIMA and, assuming all of the documents, information and fees required have been provided, the private fund can expect its application to be approved and the private fund to be formally ‘registered’ within a number of days.

Is a private fund automatically registered by making a submission to register as a private fund with CIMA?

No. The *submission* of an application to CIMA does not mean the private fund is automatically registered. The application needs to be processed and approved by CIMA prior to their registration of the private fund. Accordingly, a private fund is not 'registered' for the purposes of the PF Law (and able to accept capital contributions for the purposes of investments under section 5(6) of the PF Law) until its registration has been confirmed by CIMA.

In what circumstances might CIMA reject an application?

The most common reason CIMA might reject an application is as a result of the submission being incomplete or inconsistent (e.g. missing documents, missing details in the application form).

CIMA may also delay approval of or reject an application if adverse hits or findings emerge as part of fitness and probity checks, or if the sponsor is part of an ongoing criminal or regulatory investigation.

What can be obtained as evidence of registration when a private fund registers with CIMA?

The primary evidence of registration of a private fund will be the Certificate of Registration which is electronically generated by CIMA and then made available to the Cayman Islands legal counsel or other service provider who has made the registration submission.

Is there a publicly searchable database of private funds which are registered with CIMA?

Yes. Each private fund that is registered with CIMA will appear on the CIMA online database which is searchable here:

<https://www.cima.ky/search-entities>

What is required for a private fund to remain registered with CIMA?

A private fund is required to comply with all aspects of the PF Law, including any ongoing obligations, in order to ensure that it remains registered with CIMA but the most pertinent of these points are that it: (i) pays its annual fees due to CIMA; and (ii) attends to the annual filings required to be undertaken with CIMA (filing of its annual audited financial statements etc.).

Are AIVs required to register independently with CIMA?

Each private fund vehicle needs to be considered on its own merits and a determination made as to whether it needs to be registered under the PF Law. Where an AIV (of a Cayman private fund or a US or non-Cayman fund) does not meet the definition of 'private fund' it is not required to be independently registered with CIMA.

Details of AIVs of a Cayman private fund will be included in the registration filing of such Cayman private fund but this does not mean the AIV is 'registered' as a private fund under the PF Law (nor does it trigger any requirement for the AIV to register).

Can we obtain a CIMA "letter of good standing" on closing?

Yes, if the private fund is registered, but: (i) the CIMA letter of good standing is not immediately issued (in the same way a Certificate of Good Standing for an exempted company or exempted limited partnership is by the Registrar of Companies/Partnerships) and so it is expected that it will take three (3) business days for such letter to be issued by CIMA in the normal course; and (ii) the price of obtaining a letter of good standing from CIMA is US\$975 per certificate/entity and so is a more material cost than Certificates of Good Standing for entities obtained from the Registrar of Companies/Partnerships.

A CIMA letter of good standing will not mean that the relevant entity is in good standing with the Registrar of Companies/Partnerships and so separate Certificates of Good Standing will still need to be obtained in this regard.

Will the 7 August 2020 registration deadline/implementation date under the PF Law be extended as a result of Covid-19 disruption?

Whilst CIMA has been active in introducing a number of policy extensions and filing concessions in light of the current pandemic to lessen some of the challenges applicants and registered entities may be facing, no announcement has been made in respect of the PF Law registration deadline /implementation date and therefore, unless industry is notified otherwise, the relevant date remains 7 August 2020.

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