

Cayman Islands

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Cayman Islands Private Funds Law – Expanded Scope

On 7 July 2020, the Private Funds Law, 2020 (PF Law) was amended to vary the definition of a “private fund” by clarifying the definitions of certain entity types and extending the scope of the PF Law to additional entities.

The deadline for registration under the PF Law remains 7 August 2020. We recommend that all Cayman Island investment vehicles be re-assessed to ensure compliance particularly considering the new Administrative Fine regime. Open-ended mutual funds and hedge funds are unaffected.

Entities now brought within scope

Certain vehicles may previously have been classified as being out of scope under elements of the definition that have now been amended. These may now be required to register with the Cayman Islands Monetary Authority (CIMA) as private funds. Such entities may include:

- Vehicles set up to hold only a single investment
- Co-investment vehicles
- Alternative investment vehicles
- Master funds

Revised definition of private fund

The amendment changes the definition of private fund so that it now includes any company, unit trust or partnership that offers or issues or has issued, non-redeemable 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 such entity’s acquisition, holding, management or disposal of investments, where:

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- (a) the holders of investment interests do not have day-to-day control over the acquisition, holding, management or disposal of the investments; and
- (b) the investments are managed as a whole by or on behalf of the operator of the private fund directly or indirectly.

For your information, the following entities remain outside the scope of this definition:

- single investor vehicles (with exceptions)
- "mutual funds" such as open-ended hedge funds
- entities whose interests are held only by promoters, operators (eg directors) or by the founders, principals, owners or stakeholders of the entity or the entity's manager or adviser
- securitisation SPVs, structured finance vehicles, debt issues and debt issuing vehicles, preferred equity financing vehicles
- sovereign wealth funds and single family offices
- joint ventures, proprietary vehicles, holding vehicles
- employee benefit schemes, participation or compensation schemes, and programmes or schemes to similar effect
- individual investment management arrangements
- arrangements not operated by way of business.

Note that non-fund arrangements are excluded (see list of 25 structures and arrangements scheduled on page 29 of the PF Law).

As there is limited guidance on the scope of these categories and material sanctions for failure to register a private fund, a case-by-case analysis will be necessary.

We do not expect that any vehicles that have previously been determined to be in scope of the PF Law registration requirements will now fall out of scope.

Our original overview of the PF Law is available here: <https://marburys.com/new-registration-requirements-for-cayman-investment-funds/#private-funds-law>. For further information on any aspect of this updater please contact your usual Marbury adviser.

Disclaimer

This update provides an overview and should not be read as legal advice. A copy of the Private Funds (Amendment) Law, 2020 is available here: <http://www.gov.ky/portal/pls/portal/docs/1/12984486.PDF> and the original Private Funds Law, 2020 is available here: <http://www.gov.ky/portal/pls/portal/docs/1/12920693.PDF>. For more information please contact Marbury.