

Cayman Islands Investment Funds Private Funds Law, 2020 and Mutual Funds (Amendment) Law, 2020

July 2020 – updated for the Private Funds
(Amendment) Law, 2020 enacted July 7,
2020

Overview

On February 7, 2020 the Cayman Islands enacted new and revised legislation for collective investment vehicles. This legislation includes revisions made to Cayman's existing Mutual Funds Law ("MFL") for open ended funds and the passage of a new Private Funds Law ("PFL") for closed ended funds. Further, on July 7, 2020 the Private Funds (Amendment) law, 2020 was enacted in order to clarify the intended scope of the PFL (together, the "Laws"). The Laws seek to strengthen investor confidence in Cayman Islands investment fund vehicles and ensure that the Cayman Islands remains a preeminent jurisdiction for investment fund formation. The Laws also seek to address EU suggestions for investment fund oversight as set forth in a report dated May 27, 2019, from the EU Code of Conduct Group (Business Taxation).*

Mutual Funds (Amendment) Law, 2020

The Mutual Funds (Amendment) Law, 2020 will enhance the regulatory and supervisory framework for open ended funds:

- Funds that previously met the fifteen or fewer investor (a majority of whom are capable of appointing or removing the operator of the fund) criteria set out in section 4(4)(a) of the MFL may now be required to register with the Cayman Islands Monetary Authority ('CIMA') and once so registered will be subject to regulatory obligations.
- All regulated mutual funds must provide CIMA with information upon registration, pay an annual registration fee, comply with annual return requirements, retain accessible records and have annual audits issued or undertaken by a CIMA-approved local auditor.

Note: The exemption to the registration requirement for certain overseas private funds that solicit the Cayman Islands public for investments under the MFL will remain in place.

Private Funds Law, 2020 including the Private Funds (Amendment) Law, 2020

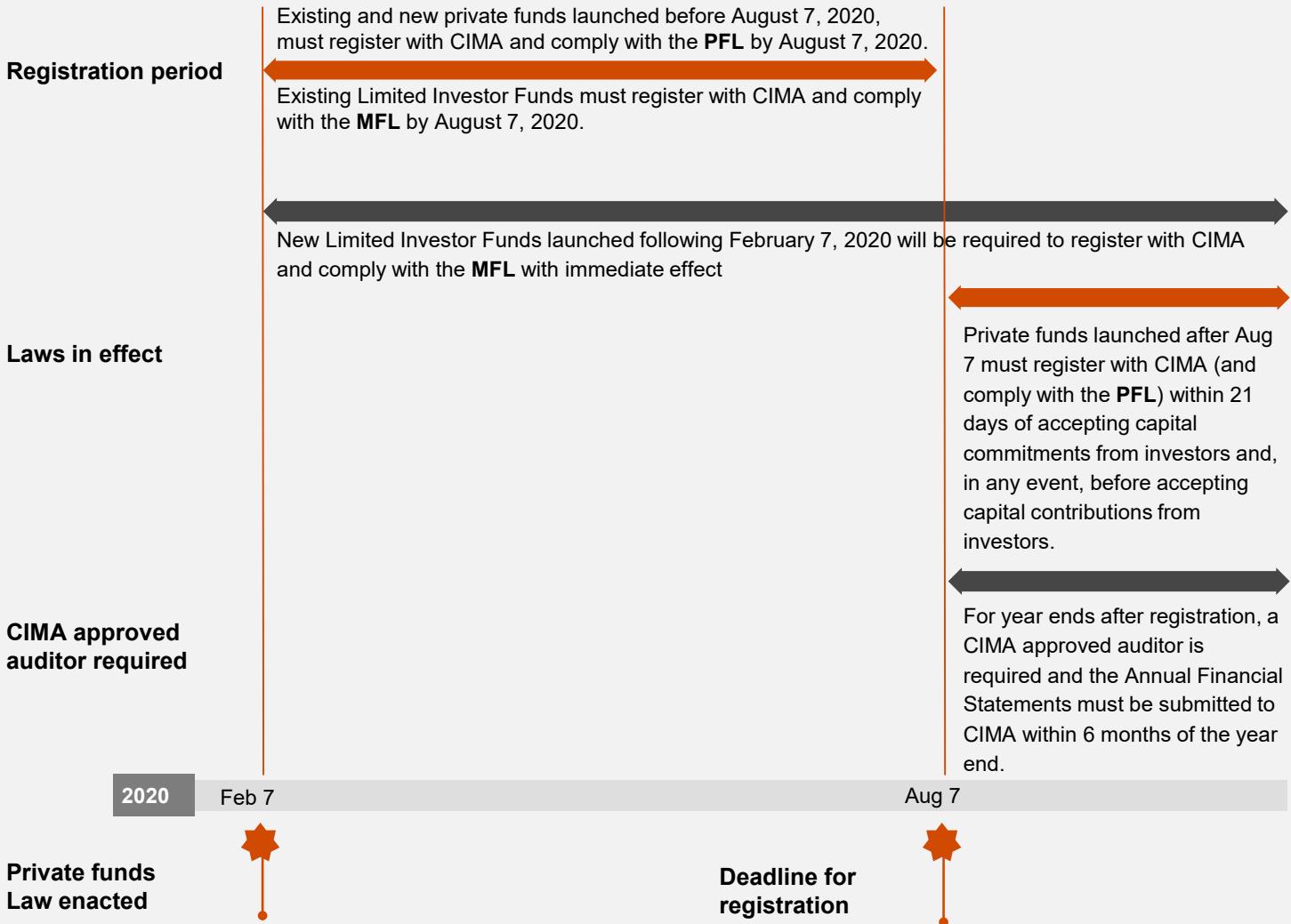
The PFL establishes a framework to monitor closed-ended funds ("private funds"), which are currently beyond the scope of the existing MFL:

- All vehicles falling within the scope of the private funds definition and section 3(1) of the PFL must register with CIMA and will be subject to regulatory obligations.
- Exemptions from registration exist for certain non-fund arrangements and the PFL also includes provisions that relieve the alternative investment vehicles of registered private funds from certain provisions.
- Private funds must provide CIMA with information upon registration, pay an annual registration fee, comply with annual audit and return requirements and retain accessible records. Annual audits must be issued or undertaken by a CIMA-approved local auditor.
- A registered private fund must also comply with certain ongoing obligations in relation to valuation of fund assets, safekeeping of fund assets, cash monitoring and identification of securities. Flexibility as to appointing service providers, including the manager, operator or administrator, to perform the valuation, safekeeping and cash monitoring functions is permitted, provided that conflicts of interest are identified, managed, monitored and disclosed.
- Refer to Appendix 1 for further details on key features of the PFL.

* Please note that PwC Cayman is not a licensed legal advisor and does not provide legal advice or legal opinions in relation to the Laws referenced above. You should not act upon the information contained in this publication without obtaining specific professional advice.

Timing and Registration

Registration and Audit Timeline



Timing and Registration (continued)

Requirements to register:

Funds can be registered electronically through CIMA's secured Regulatory Enhanced Electronic Forms Submission (REEFS) web portal by an authorized service provider.

The following documents are required to be uploaded	PFL	MFL
REEFS Application Form	x	x
Certificate of registration/incorporation (as applicable)	x	x
Constitutive documents (Memo/Articles of Association/Trust Deed/ Declaration of Partnership(as applicable)	x	
Offering Memorandum/Summary of Terms/Marketing Material (as applicable)	x	x
Auditors letter of consent	x	x
Administrators letter of consent (if applicable)	x	x
Structure chart	x	
Application fee (CI\$300)	x	x
Confirmation that majority of investors have the power to appoint/remove the operator(s) (constitutional documents/resolution/OMs etc.)		x

Fees

The Cayman Islands Government has advised that it will waive registration fees for registrations completed prior to August 7, 2020, however, an application fee of CI\$300 (USD\$365.85) will be due. Limited Investor Funds and Private Funds registering subsequent to August 7, 2020 will pay the annual registration fee of CI\$3,500 (USD\$4,268.29) and the CI\$300 (USD\$365.85) application fee.

Refer to our [advisory](#) for further information on how we can assist you with your registration.

Practical implications for Cayman Islands funds

The introduction of the Laws will have a direct impact on many entities domiciled in the Cayman Islands. The following is a high level summary of practical considerations management should be considering in advance of the effective date of the Laws:

- **Registration** - As explained above, all entities falling within the scope of the Laws will need to register with CIMA.
- **Accounting policies** - Some Cayman Islands entities currently do not prepare financial statements in line with an acceptable GAAP. Some are prepared under a “special purpose” basis under the terms of the relevant Limited Partnership Agreement. This option may no longer be available under the Laws and the financial statements may have to be prepared in accordance with an acceptable GAAP, possibly resulting in additional disclosures and/or changes to accounting policies.
- **Appointment of a CIMA-approved auditor** - The Annual Financial Statements of registered entities will need to be issued by a CIMA approved auditor (PwC Cayman is a CIMA approved auditor). If you already have a PwC auditor located outside the Cayman Islands, they can still be your main point of contact and perform the majority of the audit under a referred reporting engagement, however if you do not already have an existing PwC relationship PwC Cayman can also provide audit services directly.
- **Annual filing & Audit deadline** - Some Cayman Islands entities do not currently have an audit deadline under their current status, however under the new Laws, Audited Financial Statements will be required to be submitted to CIMA within 6 months of the year end, along with an Annual Return.
- **Operations, including valuation and custody** - Entities will need to review their valuation, custody, cash monitoring and identification of securities procedures to ensure compliance with the Laws. Note that such functions may continue to be performed “in house” by the Manager, provided that the inherent conflicts of interest are addressed and disclosed to investors.
- **Annual fees** - Entities will need to ensure that annual registration fees are paid on the 15th of January each year.
- **Questions** - CIMA has put together a website with Frequently Asked Questions which clarifies some questions on the new Laws which can be found [here](#)



PwC Cayman's Referred Reporting Process

CIMA introduced a policy in 2002 requiring all Cayman regulated mutual funds and mutual fund administrators to be audited by an approved auditor located in the Cayman Islands. At that time, PwC Cayman formed the Fund Referred Reporting Engagement Group (FRREG) solely dedicated to assisting PwC network firms comply with this policy. The new Private Funds Law and amended Mutual Funds Law will leverage the cumulative knowledge and expertise of PwC Cayman's FRREG.

PwC Cayman's market-leading hedge fund practice (including the FRREG), audits approximately 26% of all Cayman regulated mutual funds (including master funds). Since the FRREG's inception, we have been consistently growing and developing our dedicated FRREG team to serve these clients. The majority of FRREG staff are qualified CPAs or CAs with significant relevant experience in auditing regulated investment funds. We are currently focused on significantly expanding the group by adding staff at all levels. Currently, we perform local auditor sign-off engagements with over 59 PwC offices in 32 territories. Our reach and ability to work with multiple territories is a testament to the diversity and ability of the FRREG. Auditing standards require firms issuing audit opinions under referred reporting engagements to be responsible for the overall direction, supervision, performance and review of the audit. Our specialist group has expert knowledge and experience in performing the appropriate procedures necessary under the applicable auditing standards, while leveraging the work of engagement team members of your local PwC network firm.

We work directly with your local PwC network firm so that you have one primary point of contact with PwC. We are involved in the process from planning to completion to seek to identify issues up front to avoid last minute surprises. We target a 5-day turn around on our financial statement reviews but often we achieve 3 days or less and a 24 hour turn around on issuing audit opinions at the completion of the audit. We also have a dedicated e-filing team in place to file the completed Annual Return with CIMA through their online portal which is a regulatory requirement to be completed by the issuing auditor.

Our dedicated team leverages the latest technologies, such as robotics, machine learning and artificial intelligence to elements of the audit in order to digitally amplify our ability to accelerate our service delivery times and the insights the PwC team can bring to the engagement.



Contact us



Graeme Sunley

PwC Cayman Asset and Wealth Management Leader

+1 (345) 914 8642

graeme.sunley@pwc.com



Sean Parchment

PwC Cayman Referred Reporting Partner

+1 (345) 914 8618

sean.parchment@pwc.com



Jackie Kirk

PwC Cayman Director

+1 (345) 324 1833

jackie.k.kirk@pwc.com

Appendix 1 - Key Features of the Private Funds Law

Entities covered by the PFL:

Under the PFL a Private Fund is defined as 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 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;

- 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 the purposes of the requirement for registration, a Private Fund is carrying on or attempting to carry on business in or from the Islands if it is incorporated or established in the Islands, or incorporated or established outside the Islands and makes an invitation to the public in the Islands to subscribe for its investment interests, and it is in receipt of capital contributions from investors for the purposes of investments.

Entities are exempt from the PFL registration requirement if:

- a. the entity is licensed or registered under the Banks and Trust Companies Law (2020 Revision), the Insurance Law 2010, the Building Societies Law (2020 Revision) or the Friendly Societies Law (1998 Revision); or
- b. the entity is a non-fund arrangement, including but not limited to securitisation special purpose vehicles, joint ventures, holding vehicles, sovereign wealth funds and single-family offices; or
- c. it is an entity incorporated or established outside the Islands, but who has invited the public in the Islands to subscribe for its investment interests, where the investment interests are listed on a stock exchange (including an over the-counter market) or the Private Fund is regulated by a recognised overseas regulatory authority, approved by CIMA.

See Appendix 2 for a Scoping Decision Tree based on the PFL.

Alternative Investment Vehicles

A set of regulations named the Private Funds Regulations, 2020 were published alongside the PFL (the "Regulations"). The Regulations define 'Alternative Investment Vehicles' ("AIV") as a company, unit trust, partnership or other similar vehicle that -

- a. is formed in accordance with the constitutional documents of a private fund for the purposes of making, holding and disposing of one or more investments wholly or mainly related to the business of that private fund; and
- b. only has as its members, partners or trust beneficiaries, persons that are members, partners or trust beneficiaries of the private fund.

Under the PFL where the applicable GAAP permits consolidated or combined financial statements and a Private Fund chooses to report consolidated or combined financial statements with an AIV, the sections of the PFL relating to annual audit, valuation, safekeeping of fund assets, cash monitoring and identification of securities do not apply to the AIV

Appendix 1 - Key Features of the Private Funds Law (continued)

Key requirements of the PFL

The PFL seeks to ensure transparency and proper record keeping of Private Funds, the areas covered under the PFL are audit, valuation, custody, cash monitoring and security identification which are explained further below:

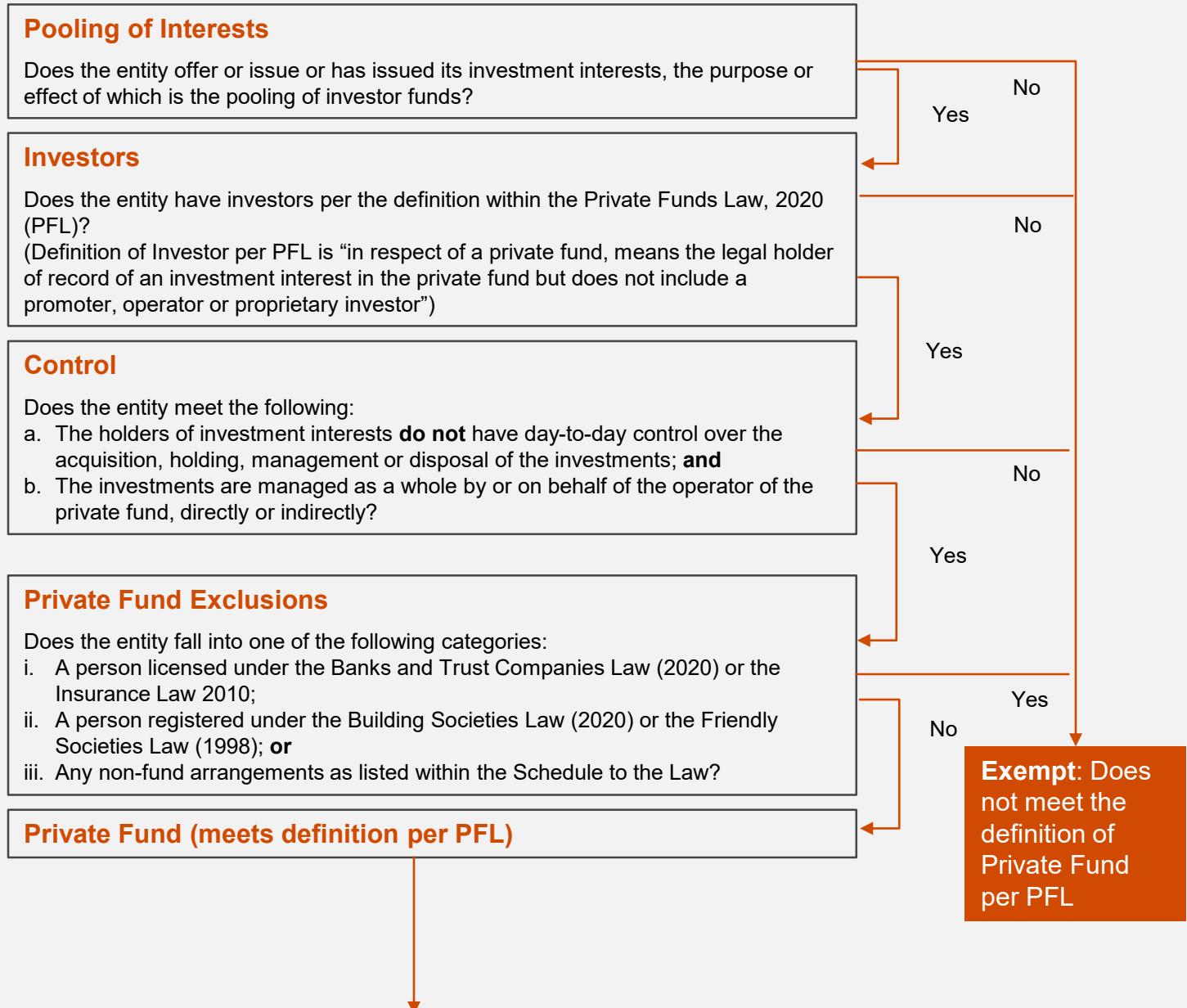
Audit – All Private Funds, that have not obtained an audit exemption, will need to be audited by a CIMA-approved auditor, with the Annual Financial Statements submitted to CIMA within 6 months of the year end. Financial Statements must be prepared in accordance with IFRS or the generally accepted accounting principles of the US, Japan, Switzerland or any other non-high risk jurisdiction. Additional rules may be published providing further guidance on acceptable financial reporting frameworks. Failure to comply will result in a fine of \$20,000. The Private Fund is also required to submit an Annual Return to CIMA.

Valuation - Valuations of the assets of a Private Fund shall be performed by an independent third party that is appropriately professionally qualified to conduct valuations in a non-high risk jurisdiction, an administrator or the manager or operator of the Private Fund (provided that the valuation function is independent from the portfolio management function or potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the Private Fund). Valuations should be performed at least annually.

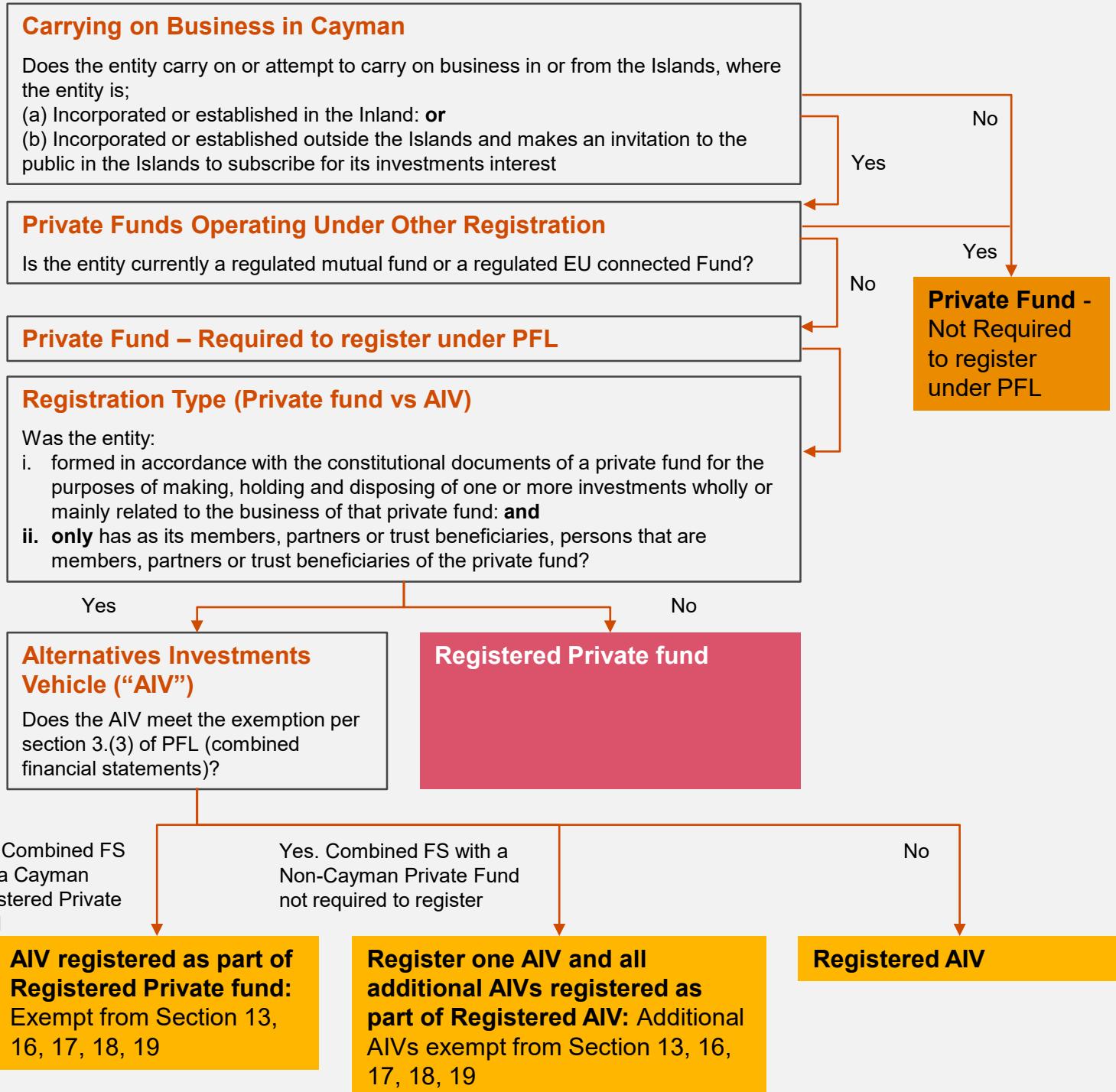
Custody - A Private Fund shall appoint a custodian for safekeeping of Fund assets. A Private Fund shall not be required to appoint a custodian if it has notified CIMA and it is neither practical nor proportionate to do so, having regard to the nature of the Private Fund and the type of assets it holds. In this case, the Private Fund shall appoint one of the following persons to carry out the title verification; an administrator, another independent third party or the manager or operator (provided that the title verification function is independent from the portfolio management function or potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the Private Fund).

Cash monitoring - A private fund shall appoint an administrator, custodian, other independent third party or the manager or operator of the Private Fund (provided that the cash monitoring function is independent from the portfolio management function or potential conflicts of interest are properly identified and disclosed to the investors of the Private Fund). The person appointed shall monitor the cash flows, ensure all cash of the private fund has been booked in cash accounts opened in the name, or for the account, of the private fund and ensure that all payments made by investors to the private fund in respect of investment interests have been received.

Appendix 2 - PFL Registration Scoping Decision Tree



Appendix 2 - PFL Registration Scoping Decision Tree (continued)





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