



Walkers Guide to Setting Up a Cayman Islands Cryptocurrency or Blockchain Fund

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This helpful guide should tell you everything you need to know about setting up a Cryptocurrency or Blockchain fund in the Cayman Islands.

Why Cayman For Your Fund

Once the investment strategy has been determined, and there is the necessary interest from investors, the decision needs to be made on the most optimal way to structure the fund. Often an offshore jurisdiction such as the Cayman Islands comes into play in the event where any of the investors are located outside of the U.S. and are U.S. tax exempt. In these scenarios it is very common for an offshore jurisdiction to form part of the fund structure.

Some of the benefits of using the Cayman Islands include:

1. Familiarity to Managers and Investors.
2. Robust and Flexible Legal Framework.
3. Stable Political Climate.
4. Availability of High Quality Service Providers.
5. Proven Record as a World Leading Financial Centre.

Structure

One of the main reasons that the Cayman Islands is so popular as an offshore jurisdiction is because of the flexibility of the fund products available. Whatever investment strategy you wish to pursue we can advise you on the most optimal structure. Some of the key questions to consider when determining the structure of your fund will be:

- > What will be the investment strategy of your fund?
- > Will you mainly be investing and trading in Cryptocurrencies, Blockchain start-ups or a combination of the two?
- > What liquidity will your investors have?
- > Have your onshore tax advisors expressed a preference for the type of legal entity that the fund should be?

The two most common structures that we see in the Cayman Islands for Cryptocurrency or Blockchain Funds are:

Open-Ended Cayman Islands Exempted Company

This structure is more common for those managers looking to pursue an investment strategy which focuses on trading in Cryptocurrencies. These strategies tend to be more liquid in nature and investors are able to redeem their investment at their own initiative. These structures are therefore open-ended and similar to a traditional hedge fund. They need to be registered with the Cayman Islands Monetary Authority (“CIMA”) unless certain exemptions apply. This CIMA registration means that these funds will need to have at least two directors (who are themselves CIMA registered). To the extent that the equity interests of the fund are to be tokenised, CIMA would consider the fund to still be offering equity interests and therefore CIMA registration will be required.

Closed-Ended Cayman Islands Exempted Limited Partnership

This structure is more common for those managers looking to pursue an investment strategy which focuses on long term investments in Blockchain start-ups or projects. These strategies tend to be illiquid in nature and investors are unable to redeem their investment without the manager’s consent. These types of funds are akin to a private equity or venture capitalist fund. Pursuant to the recently enacted Private Funds Law closed-ended funds will also need to be registered with CIMA unless certain exemptions apply.



Service Providers

Once you have decided on the most appropriate structure for your fund it is important to consider the range of services providers that your fund may need to engage. Some of the key ones are:

> **A Registered Office provider in the Cayman Islands**

It is a legal requirement for the fund to have a registered office (“RO”) in the Cayman Islands. The RO will also attend to a wide range of administrative matters on behalf of the fund.

> **An Administrator and Custodian**

For open-ended funds it is common to appoint a third-party administrator who will be responsible for the accounting of investor subscriptions and redemptions and computing the net asset value of the fund. With respect to custodians, many sponsors who have the expertise in the digital asset space prefer to self-custody rather than appoint a third party custodian. However, if institutional investors are to come into Cryptocurrency funds, they are likely to require a third party custodian (and also if the investment fund reaches a particular AUM that requires a third party custodian under applicable laws). CIMA is focused on valuation and custody of Cryptocurrencies and are likely to review the fund offering documents on these issues carefully.

> **An Auditor**

Both opened-ended and closed-ended funds registered as mutual funds and private funds respectively will need to appoint a local auditor based in the Cayman Islands who will be responsible for signing off the fund’s annual audit. All of the major accounting firms have branches in the Cayman Islands so it is relatively straightforward to find an auditor for CIMA registered funds.

> **Independent Directors**

It is more common to see independent directors in open-ended structures. They are seen to act as “watchdogs” for investors over the investment manager and other service providers to the fund. However, Cryptocurrency funds do not typically have independent directors as this sector is relatively new and the sponsor tends to provide the directors to the funds. As the sector evolves and begins to attract more institutional investors we expect independent directors to become more commonplace.

> **FATCA and AML**

The fund will be required to comply with Cayman Islands laws relating to FATCA, the Common Reporting Standard and Anti-Money Laundering. It is common for funds to appoint specialist third-party providers to assist with this. This is especially common for new funds who have limited experience with these regulatory regimes. To the extent that the fund accepts subscriptions in Cryptocurrencies, CIMA permits this provided that the administrator has the capability to conduct the AML due diligence including the source of wealth. CIMA now also requires natural persons to be appointed as AML officers to investment funds (who are subject to personal liability).

The Cayman Islands Virtual Assets (Service Providers) Act

The Cayman Islands implemented its Virtual Assets (Service Providers) Act (the “VASP Act”) on 31 October 2020. The VASP Act provides a short, accessible, technology neutral and adaptable framework for the regulation of the provision of virtual asset services. The VASP Act provides a registration and licensing regime for any person carrying on a “virtual asset service” in the course of business using a Cayman Islands entity or otherwise from within the Cayman Islands. A “virtual asset service” means the issuance of virtual assets or the business of providing one or more of the following services or operations for or on behalf of a natural or legal person or legal arrangement — (a) exchange between virtual assets and fiat currencies; (b) exchange between one or more other forms of convertible virtual assets; (c) transfer of virtual assets; (d) virtual asset custody service; or (e) participation in, and provision of, financial services related to a virtual asset issuance or the sale of a virtual asset.

In the ordinary course funds pursuing a virtual asset and/or blockchain focused strategy would not be subject to the VASP Act unless such investment fund conducts a public sale of its tokenised equity interests. To the extent that such investment fund is engaging in a public sale of tokenised equity interests, the investment manager of such investment fund will need to be registered under the VASP Act as it is providing financial services in connection with the public sale of tokens.

We have prepared a more detailed advisory on the VASP Act which can be found [here](#).



Other Considerations

Some final questions which you may need to consider and which we would be delighted to discuss with you in more detail:

Have you engaged any onshore counsel to assist with the launch?

The investments funds typically target investors onshore. Therefore we tend to work with onshore lawyers on the offering documents of the Cayman Islands domiciled fund. There are no securities offering laws in the Cayman Islands and CIMA requires that the investment fund complies with the securities offering laws in which the investors are based.

What is your timing for launching your fund?

We are often asked about timing and how quickly a Cayman Islands domiciled fund can be formed. The Cayman Islands government is moving towards a fully electronic system (and an electronic transactions law has been enacted to recognise electronic signatures). This means that fund vehicles can be formed, registered with CIMA and formation documents received on a same day basis.

Where is the investment manager located?

If the investment manager is to be incorporated in the Cayman Islands, it will need to be registered or licensed with CIMA under the Securities Investment Business Law. There is no requirement for the investment manager to a Cayman Islands domiciled fund to be registered in the Cayman Islands however some sponsors choose to do so.

About Walkers

The FinTech team at Walkers consists of experts familiar with all types of fund structures at all levels of complexity. Together with our professional services team we can offer everything from legal advice to regulatory, compliance, registered office and corporate services making Walkers your one-stop-shop for all your Cryptocurrency and Blockchain Fund needs. We also work closely with a number of other service providers on a regular basis and can assist you in determining which service providers would be most appropriate for your fund structure.

For more information or to speak to an expert simply contact fintech@walkersglobal.com or contact one of the below:

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