

Jurisdictional Comparison

British Virgin Islands,

Cayman Islands

and

Luxembourg

Investment Funds



	BRITISH VIRGIN ISLANDS	CAYMAN ISLANDS	LUXEMBOURG
REGULATORY AUTHORITY	The BVI Financial Services Commissions (FSC)	The Cayman Islands Monetary Authority (CIMA)	The Financial Sector Supervisory Commission - the Commission de Surveillance du Secteur Financier (CSSF).
TYPE OF VEHICLE	Company (BVI business company, segregated portfolio company), Unit Trust and Limited Partnership	Company (exempted company, segregated portfolio company (SPC), limited liability company (LLC) and limited duration company), Unit Trust and Exempted Limited Partnership	Under the law of 10 August of 1915 on commercial companies: public limited company (SA - société anonyme), partnership limited by shares (SCA - société en commandite par actions), limited partnership (SCS - société en commandite simple), special limited partnership (S.C.Sp. - Société en Commandite Spéciale or SLP), limited liability company (Sarl - société à responsabilité limitée). Additional options under the Fund Laws: common fund (FCP - fonds commun de placement), an investment company (SICAV - Société d'investissement à capital variable or SICAF - Société d'investissement à capital fixe). The FCP is similar to a Unit Trust and has no legal personality. The applicable Fund Law may restrict the type of entity to be used as the Fund vehicle.
TYPE OF FUND	Open-ended or closed-ended. Open-ended funds fall under the BVI Security and Investment Business Act, 2010 (as amended). Closed-ended funds are unregulated.	Open-ended or closed-ended. Open-ended funds fall under the Mutual Funds Law (2015 revised). Closed-ended funds are unregulated.	Open-ended or closed-ended. The ability to redeem at the instance of the investor does not determine if the Fund is regulated or unregulated. UCITS ¹ must be open-ended.
LICENSING/ REGISTRATION REQUIREMENTS	Under SIBA, open-ended funds or mutual funds are subject to regulation by the FSC. These funds include incubator funds, approved funds, private, professional and public funds. A prospectus is required for registration of a public fund and an offering document or term sheet is generally required for the recognition or approval of the other types of funds. However, private and professional funds may choose not to issue an offering document or a term sheet, but in such cases would have to provide and explanation as to how the relevant information concerning the fund will be provided to investors.	Open-ended funds registered with CIMA, unless there are to be less than 15 investors and they have the right by a majority vote to appoint and remove the directors. Retail funds (where the initial subscription are less than US\$100,000) must either be licensed or employ a licensed administrator. Prospectus required on registration/licensing of funds.	UCITS - a retail investment product regulated by the CSSF with detailed rules on organisational & management requirements, diversification, liquidity and use of leverage by such funds to ensure the highest level of investor protection. AIFs ² - Part II funds ³ , SIFs ⁴ , SICARs ⁵ , RAIFs ⁶ , ELTIF ⁷ , EuVECA ⁸ , EuSEF ⁹ and other unregulated Luxembourg entities used to pool investors and qualifying as AIFs. Non-AIFs - e.g. a regulated family fund set up as a SIF. Regulated Funds are required to be approved by the CSSF and are subject to the CSSF's on-going supervision. A number of documents and agreements are submitted to the CSSF as part of the approval process. A RAIF is indirectly regulated through the obligation to appoint an authorised AIFM.

¹ Undertakings for Collective Investment in Transferable Securities (**UCITS**).

² Refers to undertakings for collective investment (alternative investment funds or **AIFs**) under the Alternative Investment Fund Managers Directive (**AIFMD**), which raise capital from a number of investors with a view to investing it in accordance with a defined investment strategy for the benefit of those investors, and which do not qualify as UCITS.

³ Set up under Part II of the Luxembourg Law of 17 December 2010 on undertakings for collective investment.

⁴ Set up as a specialised investment fund (**SIF**).

⁵ Investing in risk capital (*Société d'investissement en capital à risqué* or **SICAR**).

⁶ Set up as a reserved alternative investment fund (**RAIF**).

⁷ Set up and subject to the European long-term investment funds regulation (**ELTIF**) regulation which covers funds that focus on investing in various types of alternative asset classes such as infrastructure, small and medium sized enterprises and real assets.

⁸ A fund set up subject to the European venture capital funds regulation covers a sub-category of alternative investment scheme that focuses on start-ups and early stage companies.

⁹ A fund set up subject to the European social entrepreneurship funds regulation which covers alternative investment schemes that focus on social enterprises.

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REGISTRY	Annual fees are required but no annual filing. Limited information publicly available. An online government platform is available which allows for electronic filings.	Annual filing and fees required. Limited information publicly available.	Filings are dependant on the legal form and regulatory status of the entity. Information is publicly available depending on the legal form and regulatory status of the entity. An LPA ¹⁰ is not publicly available.
FINANCIAL STATEMENTS	Audited financial statements to be filed with FSC. No requirement for local auditor sign-off.	Audited financial statements to be filed with CIMA and signed off by local auditor.	UCITS and Part II Funds: Semi-annual unaudited report and annual audited financial statements. A long-form report must be issued by the auditor with the annual report in accordance with CSSF Circular 02/81 SIFs, RAIFs, SICARs, ELTIFs, EuVECA, and EuSEF: Annual audited financial statements Unregulated vehicles: depends on a number of factors e.g. number of employees, size and turnover.
MINIMUM CAPITAL REQUIREMENT	None.	None.	UCITS and Part II Funds: Euro 1,250,000 within 6 months of authorisation. SIF: Euro 1,250,000 within 12 months of authorisation. RAIF: Euro 1,250,000 within 12 months of incorporation/formation. SICAR: Euro 1,000,000 within 12 months of authorisation.
DIRECTORS	No residential qualifications necessary. Corporate directors acceptable. The FSC requires a minimum of two directors for mutual funds, one of which must be an individual. However, only an individual can be appointed as a director of a public fund.	No residential qualifications necessary. Corporate directors acceptable. CIMA require a minimum of two directors for registered funds. The Directors Registration and Licensing Law 2014 (revised) (DRLL) requires that each director of mutual fund registered with CIMA is either registered or licensed in accordance with the DRLL. An annual to CIMA applies. A director is deemed to include a manager of an LLC pursuant to the Limited Liability Companies Law (2016 revised).	No residential qualifications prescribed under the relevant Fund Law. CSSF's administrative practice is to require at least one resident director. CSSF Circular 18/698 is of assistance in determining board composition. See also ALFI's Code of Conduct, which provides a framework of high-level principles and best practice recommendations for the governance of Luxembourg Funds. Directors must have sufficient time, experience and be of good repute in relation to the type of Fund.
SHAREHOLDER MEETINGS	No requirement for annual meetings.	No requirement for annual meetings.	Depends on the legal form, if regulated or unregulated. Generally, an annual meeting is required.
INVESTMENT MANAGER	Not required to be BVI resident or domiciled investment managers. BVI resident or domiciled managers require licensing or approval by the FSC.	No regulations for local investment managers and no licensing requirements for Cayman resident investment managers if the exemption/exclusion under the Securities Investment Business Law (2015 revised) (SIBL) applies. Annual registration and filing are required.	Not required to be a Luxembourg resident entity. UCITS must appoint a UCITS Management Company. RAIF/ELTIF must appoint an Authorised AIFM. For other AIFs wishing to use the AIFMD marketing passport, an Authorised AIFM must be appointed. Detailed rules on delegation are applicable. The Registered AIFM ¹¹ regime is also available. Luxembourg UCITS Management Companies and Authorised AIFMs are subject to CSSF authorisation and on-going supervision, detailed capital, operational and conduct of business rules, among other rules, are applicable. A management company of a FCP is also required to be regulated by the CSSF. Luxembourg entities providing MiFID services are required to be approved by the finance minister under the Financial Sector Law. ¹²

¹⁰ A limited partnership agreement (**LPA**).

¹¹ a) AIFMs managing AIFs which are not leveraged and without redemption rights for a period of five years, and with aggregate assets under management below EUR 500 million; b) AIFMs managing AIFs whose assets under management, including any assets acquired through the use of leverage, do not exceed EUR 100 million. These AIFMs must register with the CSSF and provide an annual report but no further obligations under the AIFMD. However, they do not benefit from the AIFMD marketing passport.

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INVESTMENT RESTRICTIONS	None	None	UCITS: Detailed rules on eligible assets, risks diversification, counterparty risk and concentration limits. Part II Funds, SIFs, RAIFs (not investing in risk capital), unrestricted eligible assets, there are risk diversification requirements, look through for SPVs; ramp-up periods may be permitted by the CSSF on a case by case basis. SICARs and RAIFs (investing in risk capital), no diversification requirement but eligible assets (risk capital) applicable. ELTIF, EuVECA, EuSEF eligible asset and additional requirements.
CONSTITUTIONAL DOCUMENTS	Memorandum and articles of association may be amended by a resolution of directors or by a resolution of voting shareholders. Partnership agreements may be amended by resolutions of the General Partner. Trust deeds for unit trusts can be amended in accordance with their terms.	Memorandum and articles of association for companies other than LLCs can be amended by shareholders only. LLC agreements for LLCs, Partnership agreements for exempted limited partnerships and Trust deeds for unit trusts, can be amended in accordance with their terms.	SA and SCA - Articles of association (amended by shareholders holding 2/3 of the share capital at an extraordinary general meeting before a Luxembourg notary at which at least 50% of the share capital is represented). Management Regulations and Partnership Agreement can be amended in accordance with their terms. Sarl - Articles of association (amended by shareholders holding 75% of the share capital at an extraordinary general meeting before a Luxembourg notary).
TRANSFER OF SHARES	Unrestricted save as provided in the constitutional documents.	Unrestricted save as provided in the constitutional documents.	Unrestricted save as provided in the constitutional documents and eligibility requirements of investors under the relevant Fund Law, other than a Sarl which is a private company restricted to 100 shareholders. Shares in a Sarl are not transferable to non-members unless shareholders representing at least 75% (can be reduced to 50%) of the shares have approved the transfer in a general meeting. Shares between members are freely transferable.
CURRENCY	Multi-currency funds permitted.	Multi-currency funds permitted.	Multi-currency funds permitted.
ADMINISTRATOR	Not required to be BVI resident or domiciled administrator. BVI resident or domiciled administrators require licensing or approval by the FSC.	No requirement for local administrator Cayman domiciled administrators licensed under Mutual Funds Law (2015 revised).	Registered office and for regulated funds/RAIFs central administration required to be established in Luxembourg.
CUSTODIAN	With the exception of approved and incubator funds, BVI mutual funds are required to appoint a custodian, but an exemption from having to do so can be sought from the FSC.	No custodian requirements.	Whether a custodian (safekeeping of the assets) or a depositary (safekeeping with strict liability in certain circumstances, cash monitoring and oversight duties) must be appointed, depending whether the fund is a UCITS or an AIF (regulated or unregulated) with an Authorised AIFM/sub-threshold AIFM or a non-AIF regulated by a Fund Law. The custodian or depositary must be a Luxembourg entity, holding a particular licence.
INVESTMENT ADVISER	Not required to be BVI resident or domiciled investment adviser. BVI resident or domiciled investment advisers require licensing or approval by the FSC.	No regulation for local investment advisers and no licensing requirements for Cayman resident investment advisers if the SIBL exemption/exclusion applies. Simple annual registration and filing would then be required.	Luxembourg resident or domiciled investment advisers; required to be approved by the finance minister under the Financial Sector Law if providing advice in respect of financial instruments.

¹² The Law on the financial sector.

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SET UP TIME	Start to finish indicative timing: 4-6 weeks. Approval time frame for recognition of private and professional funds is 1 week, for approval of incubator and approved funds is 1 week, and for registration of public funds is 4-6 weeks.	24 hours. Start to finish indicative timing for CIMA registration: 4-8 weeks for Licensed Mutual Funds. 2-4 weeks for Administered Funds, Mutual Funds, Registered Mutual Funds and Exempt Mutual Funds.	Regulated funds require CSSF prior approval. ¹³ Approval time-frames vary depending on the type of fund, underlying assets, target investors and quality of the service providers and directors. UCITS: 4-6 months, other regulated AIFs: 2-4 months. Unregulated funds, including RAIFs, are not subject to CSSF approval and are therefore quick to market.
TAXATION	Mutual funds and any investors who are not persons resident in the BVI are exempt from all forms of taxation in the BVI.	No income, capital gains or corporation tax and government undertaking that no such taxation, if introduced, will be levied on the income or property of the fund for a maximum of 30 years for companies (although typically it will be 20 years) and 50 years for unit trusts, LLCs and exempted limited partnership.	Unregulated Funds (other than RAIFs) in corporate form are required to withhold tax on dividends paid, are subject to corporate income tax, municipal business tax and net wealth tax. This can be reduced under certain EU directives; the Luxembourg participation regime and Luxembourg double tax treaties (DTA). UCITS, Part II Funds, SIFs and RAIFs (not investing in risk capital) are exempt from corporate income tax, dividend withholding tax, municipal business tax, net wealth tax and subject to a subscription tax (<i>taxe d'abonnement</i>) of 0.05% of their net asset value per annum, for SIFs and RAIFs (not investing in risk capital), 0.01% of their net asset value per annum. This can be reduced in certain circumstances and is payable quarterly in arrears. A SICAR in corporate form is subject to corporate income tax, but the return derived from securities is exempt. Exempt from net wealth tax. No annual subscription tax. Funds in corporate form may benefit from a number of Luxembourg DTAs. There are VAT implications but exemptions may apply.
SEGREGATED PORTFOLIO COMPANIES	Permitted under the BVI Business Companies Act, 2004 (as amended) and SPC Regulations.	Permitted under the Companies Law (2016 revised).	Permitted under the relevant Fund Law.
CROSS SUB-FUND INVESTING			Regulated Funds and RAIFs can cross invest subject to certain conditions.
NAME RESERVATION	Available at no charge for a period of 10 days if the name contains no restricted words or phrases. Available for a fee of \$200 for a period of 90 days if the name contains a restricted word, such as the word "fund".	Available for a weekly fee of US\$49 or monthly fee or US\$74.	Submitted online to the Luxembourg Business Registers (LBR) for a fee of less than 10 Euro, through the local service provider or lawyer. The certificate of availability can be downloaded for a period of 20 days from processing the request by the LBR.

¹³ The time frame will vary for closed-ended funds listing under the EU Prospectus Directive.