

Proposed Updates to the Securities Investment Business Law (“SIBL”)

On 18 July 2018 the Cayman Islands Ministry of Financial Services released a draft Bill for discussion purposes relating to amendments to the SIBL.

The draft Bill seeks to address:

- i. Deficiencies in the Cayman Islands regulatory framework of Excluded Persons;
- ii. Gaps highlighted in respect of the risks posed to the reputation of the Cayman Islands Monetary Authority (“CIMA”) and the country’s securities and investment business sector; and
- iii. Areas for clarification in the SIBL that relate to Excluded Persons.

At present there are over 2,500 Excluded Persons and approximately 35 Securities Investment Business Licensees registered or licenced in the Cayman Islands.

Under the current iteration of the SIBL, certain persons are classified as “Excluded Persons” (defined below) to whom the licensing provisions of the SIBL do not apply.

Excluded Persons

1. A company within a group of companies carrying on securities investment business exclusively for one or more companies within the same group.
2. A person carrying on securities investment business in connection with a joint venture in which that person is participating.
3. A person who is regulated in respect of securities investment business by a recognised overseas regulatory authority.
4. A person carrying on securities investment business only in the course of acting in any of the following capacities:

- Director;
- Partner;
- Liquidator (including a provisional liquidator);
- Trustee in bankruptcy;
- Receiver of an estate or company;
- Executor or administrator of an estate; or
- A trustee acting together with co-trustees in their capacity as such, or acting for a beneficiary under the trust;

Provided that in each case such person:

- (a) Is not separately remunerated for any of the activities which constitute the carrying on of such securities investment business; and
- (b) Does not hold himself out as carrying on securities investment business other than as a necessary or incidental part of performing in that capacity; or
- (c) Is acting on behalf of a company, partnership or trust that is otherwise licensed or exempted from licensing under the SIBL.

5. A person carrying on securities investment business exclusively for one or more of the following persons:

- 5.1 A sophisticated person;
- 5.2 A high net worth person; or
- 5.3 A company, partnership or trust of which the shareholders, limited partners or unit holders are either sophisticated persons or high net worth persons.

The SIBL defines a “sophisticated person” as a person:

1. Regulated by CIMA or a recognised overseas regulatory entity; or
2. Whose securities are listed on a recognised stock exchange; or
3. Who:

3.1 By virtue of knowledge and experience in financial and business matters is reasonably to be regarded as capable of evaluating the merits of a proposed transaction; and

3.2 Participates in a transaction with a value or in monetary amounts of at least US\$100,000 or its equivalent in any other currency, in the case of each single transaction.

The SIBL defines a “high net worth person” to mean:

1. An individual whose net worth (i.e., excess of assets over liabilities) is at least US\$1 million or its equivalent in any other currency; or
2. Any person that has total assets of no less than US\$5 million or its equivalent in any other currency.



At present Excluded Persons are required to register with CIMA, pay an annual fee of CI\$5,000.00 (US\$6,096.00) and submit a renewal form along with the fee. No other filings are required of Excluded Persons under the SIBL beyond the possible Anti Money Laundering audit report mentioned below.

Under the current Anti Money Laundering (“AML”) regime Excluded Persons are deemed to be carrying on “relevant financial business” because they are carrying securities investment business and therefore remain within the scope of the AML Regulations. CIMA has the power under the SIBL to require AML audits of an Excluded Person, which include the Excluded Person to submit audit reports on the entity’s AML procedures and compliance with the AML Regulations.

For the most part therefore, the current regime allows for Excluded Persons to police themselves.

Proposed amendments to the SIBL under the Bill

The Bill replaces the concept of an Excluded Person with two new classes of “Exempt Person” and a “Registered Person”.

Both classes are broken down below.

Exempt Person

1. A person participating in a joint enterprise (and where that person is a company any other company which is part of the same group of companies as that person) with the person carrying on the securities investment business where the activities constituting such securities investment business are to be carried on for the purposes of or in connection with that joint enterprise.

2. The following persons:

- (a) The Cayman Islands Stock Exchange;
- (b) CIMA; or
- (c) The Government of the Islands or any public authority created thereby.

3. A person carrying on securities investment business only in the course of acting in any of the following capacities:

- Director;
- Partner;
- Liquidator (including a provisional liquidator);
- Trustee in bankruptcy;
- Receiver of an estate or company;
- Executor or administrator of an estate; or
- A trustee acting together with co-trustees in their capacity as such, or acting for a beneficiary under the trust:

except that in each case that person:

- (i) Is not separately remunerated for any of the activities which constitute the carrying on of such securities investment business otherwise than as part of any remuneration such person receives for acting in that capacity; and
- (ii) Does not hold himself out as carrying on securities investment business other than as a necessary or incidental part of performing functions in that capacity, or
- (iii) Is acting on behalf of a company, partnership or trust that is otherwise licensed or exempted from licensing under this Law.

Exempt Persons will not be required to register with CIMA in the way that Excluded Persons are currently.

Registered Person

1. A company within a group of companies carrying on securities investment business exclusively for one or more companies within the same group.
2. A person carrying on securities investment business exclusively for one or more of the following classes of person:
 - (a) A sophisticated person;
 - (b) A high net worth person; or
 - (c) A company, partnership or trust (whether or not regulated as a mutual fund) of which the shareholders, unit holders or limited partners are one or more persons falling within (a) or (b).
- 2.1 A person to whom sub-paragraph (1) relates shall be a person who has a registered office or a place of business in the Islands for which services are provided by a person licensed to provide such services.
3. A person carrying on securities investment business but who is regulated in respect of securities investment business by a recognised overseas regulatory authority in the country or territory (other than the Cayman Islands) in which the securities investment business is being conducted.

Registered Persons will need to register with CIMA much in the same way Excluded Persons do currently however their annual renewal will need to be submitted on or before **15 January** (not 31 January as is the case with Excluded Persons).

The Bill also proposes to amend the SIBL to allow for a natural person (being a human being, as distinguished from a person who is a corporation, club, society, association or other body created by law) to apply for a SIB License.

Discretionary Powers

Should the Bill become Law CIMA will have the power to refuse the registration of a Registered Person or otherwise impose conditions on a registrant at the time of registration.

CIMA will also have the ability to direct the Registered Person or Exempt Person in relation to the securities investment business it carries on and in particular to cease/refrain from certain acts or pursuing a certain course of conduct where CIMA believes that the Registered Person or Exempt Person:

- (a) Is committing, or about to commit, an act that is an unsafe or unsound practice in conducting the business of the Registered Person or exempt person; or
- (b) Is pursuing or about to pursue, a course of conduct that is an unsafe or unsound practice in conducting the business of the Registered Person or Exempt person.

Fees, Penalties and De-registration

As mentioned above, registered persons will need to submit their annual renewal forms and payments by 15 January. Those who fail to meet this deadline will incur a penalty of 1/12th of the annual fee for every month after the 15th of January in each year that the fee is unpaid.

Registration of the Registered Person will lapse if not renewed within 3 months of the 15 January deadline but the registration may be renewed if the Registered Person pays the registration fee, together with any penalties within one month of the lapse.

Under the SIBL there are no provisions for de-registration so typically an Excluded Person will simply not renew their registration once they cease to conduct business. The Bill however imposes an obligation to de-register with CIMA within 21 days of the last business transaction of the Registered Person in the manner to be prescribed.

CIMA Enforcement

Under the Bill the enforcement powers which CIMA has in relation to Licensees will be extended to Registered Persons and Exempt Persons and as a result, where CIMA knows or has reasonable grounds to believe that the Registered Person or Exempt Person has contravened the SIBL CIMA can:

- ii) Cancel the registration or refuse the registration of a Registered Person;
- ii) Impose conditions or further conditions on the registration of the Registered Person;
- iii) Apply to the Grand Court of the Cayman Islands for any order which is necessary to protect the interests of clients of creditors of a Registered Person or Exempt Person including an injunction or restitution or disgorgement order;
- iv) Publish in the Cayman Islands Gazette and any CIMA official publication any breach of the Law or regulations or any lawful direction issued by CIMA;
- v) Require the substitution of any director or officer of a Registered Person or Exempted Person;
- vi) Appoint an advisor as to the proper conduct of the affairs of the Registered Person or Exempt Person who will report to CIMA;
- vii) Appoint a controller who shall assume control of the Exempted Person or Registered Person and, subject to necessary modifications, have all the powers of a receiver or manager of a business appointed under the Bankruptcy Law;
- viii) Report the Exempted Person or Registered Person to the Director of Public Prosecutions where CIMA has reasonable belief that the Exempted Person or Registered Person is in contravention of the Money Laundering Regulations; and
- ix) Require that the Registered Person or Exempt person take such actions as are deemed necessary for the purposes of dealing with any contravention of the SIBL.

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