

Update for SIBL Registered Excluded Persons

25 June 2019

The Securities Investment Business (Amendment) Law, 2019 ("**SIBL Amendment**"), is now in force. It amends the Securities Investment Business Law (2019 Revision) ("**SIBL**") in response to global standards and adjusts the regime for persons which carry on securities investment business but have been excluded from SIBL's licensing requirements under Schedule 4 ("**Excluded Persons**"). The Cayman Islands Monetary Authority ("**CIMA**") has issued a [notice](#) to Excluded Persons on its website to reflect the SIBL Amendment, requiring Excluded Persons to submit two AML/CFT reporting forms ("**AML/CFT Forms**") by 15 August 2019. This advisory provides a summary of the key points.

The SIBL Amendment: changes to registration regime

Securities investment business under SIBL includes dealing in securities, arranging deals in securities, advising on securities and managing securities. Typical examples of persons carrying on securities business pursuant to SIBL include Cayman Islands investment fund managers, investment advisors and broker-dealers but do not include investment funds.

There are six categories of Excluded Persons under SIBL, three of which were required to register with CIMA (broadly, those providing services intra-group; those providing services to high net worth and sophisticated persons or to entities whose investors are high net worth and sophisticated persons; and those regulated by overseas regulators). Pursuant to the SIBL Amendment, persons falling within these three registrable categories will be required to register or re-register as "**Registered Persons**" (as discussed further below).

The other categories, which were not required to register with CIMA, will now be referred to as "**Non-Registrable Persons**" and their activities will no longer be regarded as constituting securities investment business for the purposes of SIBL. Helpfully, a single family office has been added as a category of Non-Registrable Person. In addition, the SIBL Amendment confirms that a foreign company will only be carrying on securities investment business within scope of SIBL if it does so through a place of business in the Cayman Islands. Thus an entity which carries on securities investment business overseas but not through its Cayman Islands branch will not be in scope of SIBL (and should de-register).

The SIBL Amendment: changes to substantive requirements

The SIBL Amendment enhances CIMA's powers in relation to Registered Persons to align more closely with its powers in relation to licensees. In particular, CIMA may now impose conditions on a Registered Person, refuse an application and employ its enforcement powers against a Registered Person. An applicant to become a Registered Person (or licensee) is obliged to meet a number of requirements including that its shareholders, directors and senior officers are fit and proper persons.



A Registered Person (or licensee) which is a company must have at least two individual directors or a corporate director, and a limited liability company must have at least two managers. These directors or managers must be registered or licensed under the Directors Registration and Licensing Law, 2014 (as amended) ("DRLL"). While the requirement for directors or managers of Excluded Persons to be registered or licensed under DRLL is not new, previously one director or manager would have sufficed. Registered Persons in the form of general partnerships, limited partnerships, exempted limited partnerships, foreign companies and limited liability partnerships are also required to have at least two partners, directors (or equivalent officers) or managers, as the case may be, but these are not currently required to be registered or licensed under DRLL.

Requirements for licensees to segregate their own funds and property from that of their clients are now extended to Registered Persons. Shares or interests in a Registered Persons must not be issued, and issued share or interests shall not be voluntarily transferred or disposed of, without CIMA being notified within 21 days (although, unlike for licensees, prior approval is not required).

A Registered Person must notify CIMA within 21 days after any material change in the information filed in its application or annual declaration (while previously this was on an annual basis only). In addition, where a Registered Person ceases to carry on the securities investment business, it must notify CIMA of its intention to deregister.

AML/CFT Forms

Excluded Persons registered prior to 18 June 2019 must complete the AML/CFT Forms by 15 August 2019. The AML/CFT Forms (AIR-157-75 AML/CFT Inherent Risk - Securities and ARC-158-75 AML/CFT Risk Controls – Securities) are accessible on the Regulatory Enhanced Electronic Forms Submission ("REEFS") portal. The AML/CFT Forms relate to specific AML/CFT requirements and potential breaches and, as such, Excluded Persons are likely to wish for assistance with completion from Cayman Islands counsel.

Re-registration by persons already registered as Excluded Persons

Pursuant to the SIBL Amendment, registered Excluded Persons who wish to continue conducting securities and investment business must re-register with CIMA by 15 January 2020. Re-registration involves completing CIMA's application form (RRP-160-75 Application to Re-Register), which is accessible on the REEFS portal.

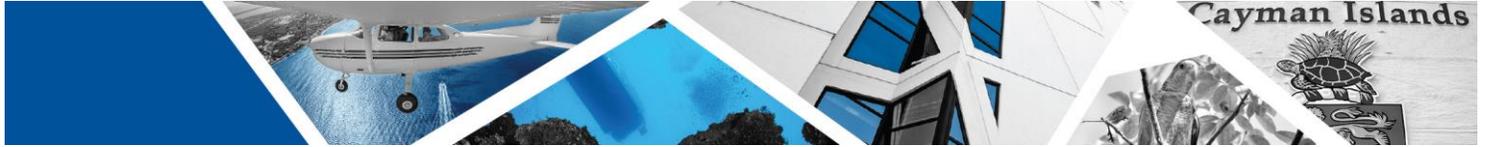
An Excluded Person which fails to file the AML/CFT Forms by 15 August 2019 will be unable to benefit from the re-registration process under the transitional provisions of the SIBL Amendment. Should it wish to continue to carry on securities investment business after 15 January 2020, it will be required to comply with all of the application requirements applicable to a new applicant for registration or licensing under SIBL. These requirements include submission of a new full application form and fee as well as being in good standing with its filing requirements, including the AML/CFT Forms. A previous failure to comply with filing requirements under the SIBL or the Anti-Money Laundering Regulations can be grounds for CIMA to refuse to register an applicant.

De-registration by persons already registered as Excluded Persons

Excluded Persons that are not re-registered by CIMA on or before 15 January 2020 will be de-registered. A registered Excluded Person may de-register prior to 15 January 2020 if it has ceased carrying on securities investment business pursuant to SIBL or is no longer within scope.

Registration by persons wishing to become Registered Persons

An applicant wishing to be considered for registration by CIMA as a Registered Person (and not previously a registered Excluded Person) must file an application form (APP-101-75 Application for SIBL Registered Person), which is accessible by the applicant's registered office via the REEFS portal, along with all of the required supporting information and the required application fee.



Application of economic substance legislation ("ES Law") to certain Registered Persons

Subject to exemptions, an entity may be required to maintain economic substance in the Cayman Islands if it conducts one or more of nine relevant activities. One of the nine relevant activities is "fund management business", which means the business of managing securities pursuant to SIBL carried on by a relevant entity licensed or otherwise authorised to conduct business under SIBL for an investment fund (where "managing securities" means managing securities belonging to another person in circumstances involving the exercise of discretion).

A licensee or Registered Person managing securities pursuant to SIBL on a discretionary basis for an investment fund will be regarded as conducting "fund management business" under the ES Law unless out of scope or exempt. Please see our previous advisories [here](#) and [here](#) for further information about the ES Law.

The definition of "fund management business" under the ES Law does not capture any securities investment business other than "managing securities". As such, it does not capture "dealing in securities", "arranging deals in securities" or "advising on securities" under SIBL. The securities under management must belong to another person. A general partner or trustee is not "managing securities" in respect of the investment fund of which it is general partner or trustee as it is the legal owner of the securities.

Next steps

This advisory provides a summary of the key points only. Walkers' Regulatory & Risk Advisory practice group comprises a team of dedicated specialist lawyers who will be happy to advise on completion of the AML/CFT Forms, as well as on all aspects of AML/CFT risk assessment, controls and the application of the ES Law. We will also be happy to assist with registration, re-registration or licensing under SIBL.

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Please do not hesitate to contact your usual Walkers contact or any of the Regulatory & Risk Advisory practice group.

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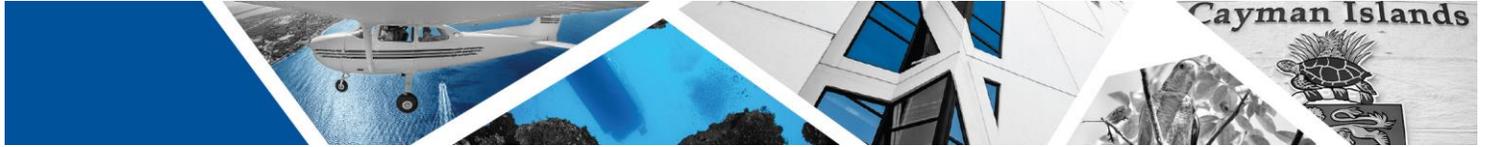
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