

Changes to the excluded person regime under the Securities Investment Business Law

UPDATE

Following the adoption of the Securities Investment Business (Amendment) Law, 2019, a new 'registered person' regime will replace the excluded person registration which was available under the Securities Investment Business Law (2019 Revision). As an initial step towards introducing the new regime, all excluded persons are required to file two AML/CFT reporting forms by 15 August 2019.

Introduction

The Securities Investment Business Law (2019 Revision) (as amended, **SIBL**) was amended on 18 June 2019 by the Securities Investment Business (Amendment) Law, 2019 (the **Amendment Law**). As a result of the Amendment Law, amongst other things, the excluded person regime will be replaced by a registered person regime, which will be more closely supervised by the Cayman Islands Monetary Authority (**CIMA**).

Additional amendments to SIBL also make it clear that limited liability companies (**LLCs**) may now apply to be licensed or registered under that Law.

As part of the process of introducing the new registered person regime, CIMA has introduced two AML/CFT forms which must be completed by all SIBL excluded persons by **15 August 2019**, irrespective of whether they intend to re-register as registered persons under SIBL.

Timing of regime change

As a result of the Amendment Law, any entity currently registered as an excluded person under SIBL will need to re-register as a registered person in order to continue carrying on securities investment business regulated by that Law. The Amendment Law contains a transitional provision allowing CIMA to direct the steps which must be taken in respect of a re-registration.

In order to re-register, an excluded person will need to submit a completed re-registration application by **15 January 2020**, via the online Regulatory Enhanced Electronic Forms Submission (**REEFS**) portal.

Re-registration is also subject to the applicant:

- being in good standing;
- having directors, senior officers and shareholders who are deemed by CIMA to be fit and proper persons;
- having a minimum of two directors;
- having directors in good standing that are currently registered or licensed in accordance with the Director Registration and Licensing Law, 2014 (as amended, the **DRLL**); and
- having filed, on or before **15 August 2019**, the two anti-money laundering (**AML**) and countering the financing of terrorism (**CFT**) forms (discussed in more detail below).

Registered persons – Who are they?

Registered persons will replace those persons who were required to be registered under SIBL as excluded persons, namely:

- companies that carry on securities investment business exclusively for one or more companies within the same group;
- persons who carry on securities investment business exclusively for:
 - sophisticated persons¹ or high net worth persons²; and/or
 - a company, partnership or trust (whether or not regulated as a mutual fund) of which the shareholders, limited partners or unitholders are sophisticated persons or high net worth persons; and
- persons who would be required to be licensed under SIBL, but who are regulated in relation to securities investment business by a recognised overseas regulatory authority in the country where that business is conducted.

Registered persons – Ongoing requirements

The key ongoing requirements relating to registered persons are summarised below.

Direction and management

A registered person must have a minimum of two directors, partners, managers or managing members (as applicable) and, where the registered person is a Cayman company or LLC, at least two directors or managers must be registered or licensed in accordance with the DRLL.

Segregation of property

Registered persons are required to account separately for their own fund and property, and the funds and property of each client.

AML/CFT reporting obligation

The obligation to file AML/CFT reporting forms is a new requirement³ with two forms to be submitted to CIMA via the online REEFS portal by **15 August 2019**. The information required by the forms will include details of:

AML/CFT Risk Controls Form

- AML/CFT policies, procedures, controls and risk assessments, together with information on AML audits and AML staff training;
- country location where records kept and staff based;
- ongoing monitoring of transactions, high risk clients and eligible introducers; and
- procedures for sanctions screening and monitoring.

AML/CFT Inherent Risk Form

- categories and numbers of clients, including levels of sophistication (HNWs, PEPs, sophisticated investors);
- organisational structure and location of excluded person, its owners and controllers;
- distribution channels, such as location of customers and means of acquiring business; and
- products and services, such as outsourcing to third parties, types and location of business and securities traded.

We will be in contact with entities affected by the changes to provide the requisite forms, together with guidance on how to complete the forms and ensure that the correct policies and procedures are in place. If you have any questions in the interim, please do not hesitate to contact us.

¹ This term is defined in SIBL and includes certain regulated persons and those persons who, due to their knowledge and experience, are regarded as being capable of evaluating proposed transactions and where the minimum single transaction value is US\$100,000 or its equivalent in any other currency.

² This term is defined in SIBL and means (a) an individual whose net worth is US\$1,000,000 or its equivalent in any other currency or (b) any person with total assets of not less than US\$5,000,000 or its equivalent in any other currency.

³ Imposed pursuant to regulation 53A of the Anti-Money Laundering Regulations (2018 Revision) (as amended).

Annual filings

As with the excluded person regime, registered persons are required to file an annual declaration and pay an annual fee on or before 15 January in each year following the year of registration.

Notification obligations

Registered Persons will be subject to closer scrutiny by CIMA in terms of their operation and control, and therefore become more closely aligned to the position of a licensee under SIBL. In particular:

- CIMA must be notified within 21 days of:
 - any change in the information filed by the registered person in its application or annual declaration;
 - any change in the directors or senior officers of a registered person;
 - the issue, voluntary transfer⁴ or disposal of the legal or beneficial interest in any shares or interests in a registered person.
- CIMA must also be notified of a registered person's intention to deregister within 21 days of the last business transaction being conducted.

Deregistration

If a registered person no longer wishes to be registered under SIBL, it must notify CIMA of its intention to deregister and file a deregistration application (the form of which is not yet available). Notice of intention to deregister must be provided to CIMA within 21 days of the final business transaction being concluded in the Cayman Islands.

Enforcement

CIMA's enforcement powers under SIBL have been extended to apply to registered persons. In particular, CIMA has a general power to request information from a registered person regarding its business and, where it believes that a registered person is not in compliance with SIBL, CIMA may give written directions to that person on such terms and conditions as it thinks fit.

Alternatively, CIMA may take enforcement action where it knows or has reasonable grounds to believe that a registered person:

- is insolvent, or is likely to become insolvent;
- is carrying on its business fraudulently, in a manner otherwise detrimental to the public and/or its clients or creditors;
- has contravened SIBL (including any regulations made under SIBL) or the Anti-Money Laundering Regulations (2018 Revision) (as amended);
- has failed to comply with a condition of its registration or any lawful direction issued by CIMA;
- has not conducted the direction and management of its business in a fit and proper manner, or who has directors, senior officers, managers or owners who are not fit and proper persons,

The enforcement powers available to CIMA include:

- cancelling the registration;
- imposing conditions (or further conditions) upon the registration;
- requiring an audit of that person's anti-money laundering (AML) systems and procedures;
- requiring the substitution of any director or officer of the registered person;
- requiring the divestment of ownership or control of the registered person;
- at the expense of the registered person, appointing an advisor or controller in respect of the registered person and their business; and

⁴ Where there is an involuntary transfer or the ownership of shares/interests transfers by operation of law, the registered person must inform CIMA as soon as it becomes aware of the same, together with details of the relevant shares or interests and the person by whom they are held.

- requiring such action to be taken by the registered person as CIMA may specify.

Where CIMA appoints an adviser or controller to a registered person, that person will provide CIMA with a report regarding the affairs of the registrant and his or her recommendations. CIMA may then revoke or extend the appointment of the adviser/controller, allow the registrant to reorganise its affairs or may, as a last resort and in respect of a registrant which is a company, apply to the court for the registered person to be wound up.

SIBL provides a right to appeal against CIMA's employment of its enforcement powers.

Registered persons and economic substance

Persons registered as registered persons under SIBL will be required to consider whether they fall within - scope of the Cayman Islands economic substance regime. For more information on this topic, please see our Update [here](#).

Non-registrable persons

The Amendment Law also includes a new category of **non-registrable persons** which, as the name suggests, are not required to register under SIBL. Non-registrable persons include persons carrying on securities investment business solely in the course of acting in the capacity as a director, partner (including a general partner of a limited partnership fund vehicle) or manager of an LLC, provided that they do not receive separate remuneration for any such activities and do not hold themselves out as carrying on securities investment business other than as is necessary to perform that role.

Mourant

Should you require any further information relating to the amendment of and regulation under SIBL, please get in touch with your usual contact or one of the contacts named below.

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