

Amendments to the Securities Investment Business Law (2019 Revision)

Introduction

The Securities Investment Business (Amendment) Law, 2019 (**SIB Amendment**) was published on 18 June 2019.

Overview

The SIB Amendment includes a number of amendments to the Securities Investment Business Law (2019 Revision) (**SIBL**) in response to the Caribbean Financial Action Task Force's evaluation of Cayman's anti-money laundering framework and the Cayman Islands Monetary Authority's (**CIMA**) review of the Excluded Person regime under SIBL.

The amendments will affect persons who are currently registered with CIMA as Excluded Persons under SIBL and broadens the scope of the regulatory and supervisory framework for persons conducting securities investment business.

Background – SIBL and the Excluded Persons Regime

SIBL regulates the conduct of certain securities investment activities, including dealing in, arranging deals in, managing or advising on, securities in or from within the Cayman Islands. SIBL applies to Cayman Islands companies and partnerships, and foreign companies registered in the Cayman Islands which engage in "securities investment business" in or from within the Cayman Islands.

Prior to the SIB Amendment, if SIBL applied to an entity and its activities, then that entity was required to either:

1. apply to CIMA for a full licence under SIBL; or
2. register as an "Excluded Person" if the entity fell within certain exemptions from the requirement to hold a licence (the vast majority of entities conducting securities investment business in or from within the Cayman Islands were registered as Excluded Persons rather than obtaining a full licence).

The following categories of persons were permitted to register as an Excluded Person, rather than apply for a full licence:

1. a group company that carries on securities investment business exclusively for one or more companies within the same group;
2. a person who carries on securities investment business exclusively for sophisticated persons (i.e. a listed or regulated entity, or an experienced investor that invests more than US\$100,000 per transaction), high net worth persons (i.e. an individual with a net worth of at least US\$1,000,000 or a legal person with total assets of at least US\$5,000,000) or entities whose investors are either sophisticated persons or high net worth persons; or
3. a business regulated by a recognised regulatory authority in the country in which the securities investment business is being conducted.

Entities managing or advising investment funds would generally fall within 1.-3. above.

Excluded Persons were required to make an annual exemption filing and pay an annual fee to CIMA (currently US\$6,098). No other filings were required of Excluded Persons under SIBL.

Impact of the SIB Amendment

As a result of the SIB Amendment:

1. excluded Persons are required to provide CIMA with certain anti-money laundering/counter terrorism information by 15 August 2019 by completing forms AIR-157-75 and ARC-158-75 (Campbells have prepared editable versions of these forms and sent them to registered office clients);
2. excluded Persons now are referred to as “Registered Persons” for the purposes of SIBL;
3. current Excluded Persons will need to re-register as Registered Persons by 15 January 2020. The registration requirements require CIMA to be satisfied that the applicant’s shareholders, directors and senior officers are fit and proper persons which may require the provision of personal questionnaires and other documents for such persons. No guidance has been issued yet but Campbells will provide an update in due course;
4. registered Persons will need to file an annual declaration by 15 January each year commencing 2020;
5. a Registered Person will also be required to:
 - notify CIMA within twenty-one days of ceasing to carry on securities investment business;
 - notify CIMA within twenty-one days of any material change in the information filed by it in its application or annual declaration;
 - notify CIMA of any issue of shares (if a company) or interests (if a partnership) and, where issued, any voluntary disposal of such shares or interests (including a beneficial interest therein) within twenty-one days of the transfer or disposal;
 - notify CIMA of any changes in senior officers of a Registered Person within twenty-one days of the transfer or disposal;

- change its name if CIMA considers it likely to deceive or mislead or if it includes any prescribed word or expression; and
 - separately account for the funds and property of each client and that of the Registered Person.
6. governance requirements have been introduced including the requirement to have an appropriate number of directors, partners or managers (as the case may be) appointed. This requires all Registered Persons that are companies to have at least two individuals as directors or one corporate director, all Registered Persons that are limited liability companies to have at least two managers and all Registered Persons that are exempted limited partnerships to have at least two directors (or equivalent officers) of the general partner or, where a general partner is another exempted limited partnership, of the ultimate general partner;
 7. general partners of exempted limited partnerships and single family offices, along with other limited categories of persons (essentially Government bodies and certain persons who conduct securities investment business ancillary to their main business and who are not separately remunerated), are specifically exempt from needing to register as a Registered Person, but are subject to the Cayman Islands' anti-money laundering regime; and
 8. the categories of persons who may be licensed or registered to conduct securities investment business are Cayman Islands companies and partnerships, foreign companies registered in the Cayman Islands, limited liability companies (formed and registered under the Limited Liability Companies Law (2018 Revision)) and limited liability partnerships (formed and registered under the Limited Liability Partnership Law, 2017).

CIMA will have broader supervisory and enforcement powers including the power to refuse or revoke the registration of a Registered Person, to impose conditions on it, to direct it to cease and desist from unsafe or unsound practices, and to request information as to its securities investment business.

Going forward, entities falling within the definition of “Registered Person” pursuant to SIBL will need to be mindful of CIMA’s registration and continuing reporting requirements.

Economic Substance

The International Tax Co-operation (Economic Substance) Law, 2018 (**ESL**) has introduced certain reporting and economic substance requirements for “relevant entities” conducting “relevant activities”, such as fund management business.

As a result of the SIB Amendment, the ESL will apply to Registered Persons undertaking fund management business.

We recommend that you contact your usual contact at Campbells to consider the impact of the ESL and how best to comply going forward.

Further Information

For more information please contact any one of the below.



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