

Guidance Note

The Securities Investment Business Act

Guidance Note

The Securities Investment Business Act

Introduction

The Securities Investment Business Act, (2020 Revision) ("**the Act**") regulates securities investment business in the Cayman Islands. The Act provides for the regulation of persons carrying on securities investment business, including market makers, broker-dealers, securities arrangers, securities advisors and securities managers, in or from the Cayman Islands. A person or entity shall not carry on or purport to carry on securities investment business unless they are 'licensed' or 'registered' under the Act or 'exempt' from holding a licence or registration.



Who does the act apply to?

The Act applies to:

- 1 any company (whether ordinary, exempted, limited liability or foreign), or partnership (whether general, limited or exempted) incorporated or registered in the Cayman Islands which carries on securities investment business anywhere in the world; and
- 2 any entity which has established a place of business in the Cayman Islands through which securities investment business is carried on.

Under (1) above, a company incorporated or registered in the Cayman Islands may be required to have a physical presence in the Cayman Islands in order to fall within the ambit of The International Tax Co-Operation (Economic Substance) Act, 2018 (as amended) (the "**ES Act**"). The ES Act as it relates registered persons as it related to fund managers only relates to companies which are "managing securities belonging to another person in circumstances involving the exercise of discretion" (i.e. entities carrying on discretionary fund management under the Act).

If such persons do carry on securities investment business, in accordance with the Act they are required to either obtain an appropriate 'licence' or to register as a 'registered person' (previously categorized as an 'excluded person').

What does securities investment business mean?

Securities investment business means:

- dealing (i.e. buying, selling, subscribing or underwriting) in securities as an agent;
- dealing in securities as principal but only where the person dealing:
 - holds himself out as dealing in securities at prices determined generally and continuously;
 - holds himself out as engaging in the business of underwriting securities; or
 - regularly solicits members of the public (which excludes a sophisticated person and a high-net-worth person (see below) and persons regulated

by Cayman Islands Monetary Authority ("CIMA") or a recognised overseas regulatory authority) to induce them to buy or sell or subscribe for securities and the dealing results from that solicitation.

- making arrangements in relation to the securities with a view to:
 - another person dealing in securities; or
 - a person who is participating in the arrangements dealing in securities.
- managing securities belonging to another person on a discretionary basis; and
- advising in relation to securities but only if:
 - the advice is given to someone in their capacity as an investor or potential investor or as an agent for an investor or potential investor; and
 - the advice is on the merits of that person buying, selling, subscribing for or underwriting a particular security or exercising any right conferred by a security to buy, sell, subscribe for or underwrite a security.

'Securities' include most forms of shares and stock, debt instruments, options, futures and contracts for differences

The Act also creates certain offences relating to:

- knowingly or recklessly providing any false or misleading information in a material particular to CIMA;
- the creation of a false or misleading appearance in relation to:
 - the active trading in; or
 - market for or price of any securities listed on the Cayman Islands Stock Exchange (the "CSX"); and
- individuals who have information as insiders relating to securities listed on the CSX improperly disclosing information or dealing in or encouraging another person to deal in securities listed on the CSX.

What does not constitute securities investment business?

The Act specifically provides that certain activities are not considered securities investment business and as such are considered "excluded activities" which fall outside of the Act. These activities include:

- where a person as principal or agent deals in securities which create or acknowledge indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation made by such person or his principal;
- where a company, partnership or trust issues, redeems or repurchases any of its securities;
- where a company disposes of any of its treasury shares;



The Securities Investment Business Act

- where a person deals in securities for the sole or main purpose of limiting the extent to which a relevant business will be affected by any identifiable risk;
- where a person deals, or arranges deals, in securities, advises on securities or manages securities for the purposes of or in connection with the disposal of goods or supply of services;
- where a person deals, or arranges deals, in securities or advises on securities in the course of carrying on any profession or business not otherwise constituting securities investment business and where such transaction is a necessary or incidental part of such business and is not separately remunerated;
- where a person deals, or arranges deals, in securities in connection with an employee share or pension scheme;
- where a company, partnership or trust, acting as principal and dealing only on its own behalf, deals in securities by applying its own proprietary assets;
- where a person makes arrangements in relation to his own deals, to enable parties to communicate or to be introduced to one another, in connection with securities evidencing indebtedness, in connection with the provision of finance or in connection with the issue of securities; and
- where a person gives advice in any communications media the primary purpose of which is not to induce persons to deal in securities and that person derives no benefit from any such dealing.

Non-Registrable Persons

If a person falls within one of the following exemptions, they will fall within the ambit of the Act and shall be referred to as "non-registrable persons" and are exempt from being required to register with CIMA:

- 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.
- the following persons:
 - the CSX;
 - CIMA; or
 - the Cayman Islands Government or any public authority created by the Government.
- a person carrying on securities investment business only in the course of acting in any of the following capacities:
 - director;
 - partner;



The Securities Investment Business Act

- o manager of a limited liability company;
- o liquidator (including a provisional liquidator);
- o trustee in bankruptcy;
- o receiver of an estate or company;
- o executor or administrator of an estate; or
- o 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 is not separately remunerated for the securities investment business (otherwise than as part of any remuneration that person receives for acting in that particular capacity) and either:

- o does not hold himself or herself out as carrying on securities investment business other than as a necessary or incidental part of performing functions in that capacity, or
- o is acting on behalf of a company, partnership or trust that is otherwise licensed or exempted from licensing under the Act.

- the conduct of securities investment business by a single family office

Registrable Persons

Those persons that fall within one of the below categories must register with CIMA as a "Registered Person":

- a company carrying on securities investment business exclusively for one or more companies within the same group;
- a person carrying on securities investment business established in the Cayman Islands who is regulated by a recognised overseas regulatory authority where the securities investment business is being carried on in that country;
- a person carrying on securities investment business exclusively for:
 - o a sophisticated person¹;
 - o a high net worth person²; or
 - o a company, partnership or trust of which the shareholders, until holders or limited partners are all sophisticated persons or high net worth persons.

¹ The Act defines a "sophisticated person" as someone: (i) who is regulated by CIMA or an overseas regulatory authority recognised by CIMA; or (ii) whose securities are listed on a recognised securities exchange; or (iii) who 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 participates in each transaction with a value or in monetary amounts of at least CI\$80,000 (approximately US\$100,000).

² The Act defines a "high net worth person" as (i) an individual whose net worth is at least CI\$800,000 (approximately US\$1,000,000); or (ii) any person that has a total assets of not less than CI\$4,000,000 (approximately US\$5,000,000)



The Securities Investment Business Act

Registration requires an applicant to submit a fee and file an application form along with ancillary supporting documents.

All Registered Persons must have two persons in management roles, specifically: (i) companies must have two or more directors, comprised of either one individual and one corporate director, or two individual directors each of whom is complying with the Directors Registration and Licensing Act, 2014; (ii) at least two managers in the case of limited liability companies; (iii) or at least two partners in the case of partnerships. Additionally, applicants will be required to demonstrate that their shareholders, directors and senior officers are all fit and proper persons.

Registered Persons must notify CIMA of any material changes to the information they provide to CIMA within 21 days of the change of information and failure thereof may result in CIMA taking enforcement action against the Registered Person. Such notification also applies to cases where a Registered Person chooses to discontinue their securities investment business.

Licence Requirements

Those persons carrying on securities investment business that do not fall within an exemption or within the Registered Person regime must hold a licence issued by CIMA. This list would generally include market makers, broker-dealers, securities arrangers, securities advisors and securities managers, who are carrying on securities investment business in or from the Cayman Islands.

An application for a licence must be made in the prescribed form together with the relevant fee and supporting documentation. Once the correct information/full application is received by CIMA, it will process the application. CIMA has the power to reject the application or grant the licence subject to such conditions as it sees fit, if any.

In deciding whether to grant a licence, CIMA will consider the following factors: (i) will the applicant be able to comply with the provisions of the Act and applicable regulations; (ii) will the applicant be able to comply with the Money Laundering Regulations (as Revised); (iii) is there any reason why, in the public interest, the licence should not be granted; (iv) does the applicant have the necessary skills and knowledge to undertake this business; (v) does the applicant have the appropriate facilities and books and records; and (vi) are the management and senior staff fit and proper persons?

Once a licence is obtained, the licensee will be subject to ongoing restrictions and obligations as prescribed by law and any conditions that may be attached to the licence. Applicant requirements for the different categories of licensees vary. Please contact us for further information particular to your circumstances.

Anti-Money Laundering Requirements

The anti-money laundering regime in the Cayman Islands applies to entities which are licensed or regulated under the Act for securities investment business purposes as they engage in 'relevant financial business' (as defined in the Proceeds of Crime Act (as Revised)). Licensees and Registered Persons are required to appoint anti-money laundering officers



The Securities Investment Business Act

and have in place systems, policies and procedures to implement an effective anti-money laundering framework in their organization, including procedures for customer due diligence, recordkeeping, implementing a risk-based approach, ongoing monitoring, complying with lists of targeted financial sanctions, internal reporting of suspicious activities, staff screening and training and internal controls. Persons that do not comply with the anti-money laundering requirements may be subject to an administrative fine or criminal prosecution.

CIMA'S Powers and Enforcement

The Act grants CIMA with powers of regulation, inspection and enforcement. CIMA has the power to revoke a licence or cancel a registration, impose conditions on a licensee/registrant or apply to the Grand Court for injunctions and restitution and disgorgement orders. Maximum penalties for non-compliance with the Act will constitute an offence and can result on summary conviction to imprisonment for a term of five years, a fine of up to Cl\$100,000 (approximately US\$122,000) with additional penalties accruing of up to Cl\$10,000 (approximately US\$12,000) each day for which the offence persists.



The Securities Investment Business Act

Guidance Note

Guidance Note

This publication is for general guidance and is not intended to be a substitute for specific legal advice. Specialist advice should be sought about specific circumstances. If you would like further information, please contact:

Chris Humphries
Managing Director
Tel: +1 (345) 814-7911
chris.humphries@stuartslaw.com

Jonathan McLean
Partner
Tel: +1 (345) 814-7930
jon.mclean@stuartslaw.com

Megan Wright
Partner
Tel: +1 (345) 814-7904
megan.wright@stuartslaw.com

Stuarts Humphries is a leading Cayman Islands legal practice with international reach. Offering a full range of corporate and commercial legal advice together with a constant client focus, our experienced attorneys assist our clients on their most significant and challenging commercial transactions, structures, liabilities and obligations.

Our proven track record in advising leading international Law Firms, Investment Managers, Investment Companies and High-Net-Worth individuals is a result of the deep understanding of our markets.

At Stuarts, we strive to build and maintain enduring relationships with our clients through the combined legal expertise and business acumen of our practice groups and by providing outstanding service.



The Securities Investment Business Act

3rd Floor Kensington House,
69 Dr. Roy's Drive
P.O. Box 2510, Grand Cayman,
KY1-1104, Cayman Islands

Tel: +1 (345) 949-3344
info@stuartslaw.com

Fax: +1 (345) 949-2888
stuartslaw.com