



GUIDANCE NOTE

THE SECURITIES INVESTMENT BUSINESS LAW



STUARTS WALKER HERSANT HUMPHRIES



World



Class



Responsiveness

GUIDANCE NOTE

THE SECURITIES INVESTMENT BUSINESS LAW

The Securities Investment Business Law, (as Revised) (“**the Law**”) regulates securities investment business in the Cayman Islands. The Law provides that a person or entity shall not carry on securities investment business unless they are licensed under the Law or exempt from holding a licence.

The Law has been recently amended (The Securities Investment (Amendment) Law, 2019) (the “**2019 SIBL**”), the principal effect of which is to introduce important changes to the regulatory and supervisory framework applicable to those persons currently registered as ‘excluded persons’ under the Law including Cayman Islands fund managers, investment advisers and brokers dealers.

A currently registered Excluded Person cannot continue to carry on securities investment business after 15 January 2020, unless by that date, it has been re-registered or registered by the Cayman Islands Monetary Authority (“**CIMA**”) as a Registered Person or has been granted a license under the Law.

DOES THE LAW AFFECT ME?

The Law applies to:-

1. any company, foreign company 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) Law, 2018 (as amended) (the “**ES Law**”). The ES Law 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 Law).

If such persons do carry on securities investment business, they are required under the 2019 SIBL to either obtain a 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;



GUIDANCE NOTE

- 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 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 are defined to include most forms of shares and stock, debt instruments, options, futures and contracts for differences.

The law also creates certain offences relating to:

- 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; and
- individuals who have information as insiders relating to securities listed on the Cayman Islands Stock Exchange improperly disclosing information or dealing in or encouraging another person to deal in securities listed on the Cayman Islands Stock Exchange.

WHAT DOES NOT CONSTITUTE SECURITIES INVESTMENT BUSINESS?

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

1. 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;
2. where a company, partnership or trust issues, redeems or repurchases any of its securities;
3. where a company disposes of any of its treasury shares;
4. 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;
5. 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;



GUIDANCE NOTE

6. 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;
7. where a person deals, or arranges deals, in securities in connection with an employee share or pension scheme;
8. 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;
9. 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
10. 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 Law and shall be referred to as “non-registrable persons” and are exempt from being required to register:

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 Exchange;
 - b. CIMA (as the authority); or
 - c. the Government of the Cayman Islands or any public authority created by the Government.
3. a person carrying on securities investment business only in the course of acting in any of the following capacities:
 - a. director;
 - b. partner;
 - c. manager of a limited liability company;
 - d. liquidator (including a provisional liquidator);
 - e. trustee in bankruptcy;
 - f. receiver of an estate or company;
 - g. executor or administrator of an estate; or
 - h. 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:

- does not hold himself or herself out as carrying on securities investment



GUIDANCE NOTE

business other than as a necessary or incidental part of performing functions in that capacity, or

- is acting on behalf of a company, partnership or trust that is otherwise licensed or exempted from licensing under the Law.
4. The conduct of securities investment business by a single family office.

DO I NEED TO REGISTER?

The following persons are required to be registered under the Law:

- 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:
 - a sophisticated person;
 - a high net worth person; or
 - a company, partnership or trust of which the shareholders, unit holders or limited partners are all sophisticated persons or high net worth persons.

A sophisticated person is someone:

- regulated by CIMA or an overseas regulatory authority recognised by CIMA; or
- whose securities are listed on a recognised securities exchange; or
- 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).

A high net worth person is:

- an individual whose net worth is at least CI\$800,000 (approximately US\$1,000,000); or
- any person that has a total assets of not less than CI\$4,000,000 (approximately US\$5,000,000).

COMPLIANCE WITH THE LAW

Those persons that fall within one of the above “registrable persons” categories must register or re-register with CIMA by 15 January 2020 (and each 15th January thereafter) (as a “Registered Person”). Registration or re-registration requires an applicant to submit a fee and file an application form along with ancillary supporting documents.



GUIDANCE NOTE

Further changes under the 2019 SIBL state that 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; (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.

There is now an ongoing obligation for Registered Persons to notify CIMA of any material changes to the information they provide to the Authority. Failure to notify CIMA within 21 days of the change of information 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.

The Law gives CIMA enhanced powers of regulation, inspection and enforcement. Maximum penalties for non compliance with the Law will constitute an offence and can result on summary conviction to imprisonment for a term of five years, a fine of up to CI\$100,000 with additional penalties accruing of up to CI\$10,000 each day for which the offence persists.

Failure to re-register as a SIBL Registered Person by 15 January 2020, will result in penalties accruing for delays and may result in de-registration by CIMA and consequentially an inability to continue trading in securities.

WHAT SHOULD I DO NOW?

You should consider:-

1. whether your activities fall within the ambit of the Law and, if so;
 - a. whether you are an existing Excluded Person who should re-register as a Registered Person; or
 - b. whether you should register as a Registered Person / apply for a licence under the Law.

Stuarts Walker Hersant Humphries can assist with advising on the requirements under the Law in addition to compliance and re-registration. Please contact us for further information.



STUARTS WALKER HERSANT HUMPHRIES

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: (345) 814-7911
chris.humphries@stuartslaw.com

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

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

Simon Orriss
Associate
Tel: (345) 814-7931
simon.orriss@stuartslaw.com

Stuarts Walker Hersant 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 lasting relationships with our clients through the combined legal expertise and business acumen of our practice groups and by providing outstanding service.