



# Guidance Note

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Registration and Continuing Obligations of  
SIBA Registered Persons

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## Registration and Ongoing Obligations of SIBA Registered Persons

### Introduction

This Guidance Note sets out the registration and continuing obligations of a Securities Investment Business Act registered person (“**Registered Person**”) registered with, the Cayman Islands Monetary Authority (“**CIMA**”) under the Securities Investment Business Act (2020 Revision) (“**SIBA**”). The requirements applicable to a ‘licensee’ under SIBA are not set out in this Guide and may be viewed generally in our [Securities Investment Business Act Guide](#).

### Registration

SIBA provides that ‘Securities’ includes most forms of shares and stock, debt instruments, options, futures and contracts for differences. ‘Securities investment business’ means:

- (i) dealing (i.e. buying, selling, subscribing or underwriting) in securities as an agent;
- (ii) dealing in securities as principal but only where the person dealing:
  - a. holds himself out as dealing in securities at prices determined generally and continuously;
  - b. holds himself out as engaging in the business of underwriting securities; or
  - c. 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
- (iii) making arrangements in relation to the securities with a view to:
  - a. another person dealing in securities; or
  - b. person who is participating in the arrangements dealing in securities
- (iv) managing securities belonging to another person on a discretionary basis; and
- (v) advising in relation to securities but only if:
  - a. 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
  - b. 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.

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

- (i) a company carrying on securities investment business exclusively for one or more companies within the same group;
- (ii) 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;
- (iii) a person carrying on securities investment business exclusively for:
  - a. a ‘sophisticated person’<sup>1</sup>;

<sup>1</sup> A “sophisticated person” is 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 C\$80,000 (approximately US\$100,000).



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

All Registered Persons are required to register with CIMA and maintain such registration annually. Registered Persons must not conduct any 'securities investment business' without such registration in place subject to penalty. Registrations must be made through CIMA's Regulatory Enhanced Electronic Forms Submission ("REEFs") web portal. Stuarts has access to REEFs and will attend to registration and ongoing filings for our clients.

In order to register with CIMA, a Registered Person is required to file, amongst other items: (i) application form; (ii) client list; (iii) corporate documentation; (iv) personal declarations and supporting documentation for directors, managers, senior officers<sup>1</sup>, principals of the general partner, managing members and shareholder(s) (who holds 10% or more of the Registered Person's shares); (v) anti-money laundering officer information and supporting documentation; (vi) organisational chart(s); and (vii) application fee.

## Ongoing Obligations

**Annual Fee.** There is an annual fee payable to CIMA in each year in the amount of CI\$5,000 (approx. US\$6,100). Such fee must be paid by 15 January in each year subject to penalties.

**Annual Return.** A Registered Person will, in respect of each financial year of the Registered Person, be required to submit an annual return in the prescribed form. There is a CI\$300 (US\$366) fee payable together with the annual return.

**Updated Information.** 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.

**Director Registration.** 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. Director registration fees must be paid by 15 January in each year subject to penalties.

**Senior/AML Officers.** Registered Persons are required to demonstrate that their shareholders, directors and senior officers are all fit and proper persons for such positions or to have such control and ownership. A Registered Person must notify CIMA within twenty-one days of the change of any senior officer.

**Shares.** A Registered Person must not issue or voluntarily transfer or dispose of shares or interests, subject to certain exemptions, without the notification to CIMA within twenty-one days.

<sup>2</sup> A "high-net worth person" is someone who is (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).

<sup>3</sup> "senior officer" means a director, managing director, president, chief executive officer, partner, managing partner, general partner, ultimate partner, manager or someone who has a similar control function.



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**AML Obligations.** A Registered Person is required to comply with the Anti-Money Laundering Regulations (Revised) (the “**AML Regulations**”) and other Cayman Islands laws, rules and regulation relating to anti-money laundering (“**AML**”), combating terrorist financing (“**CTF**”) and proliferation financing (“**PF**”) and targeted financial sanctions (“**TSF**”). The Registered Person must establish AML systems and procedures for the purpose of complying with the AML Regulations. The Registered Person must also designate employees to fulfil the roles of AMLCO, MLRO and DMLRO that have the responsibility for procedures with responsibility for the procedures for combating AML/CTF/PF/TSF and undertake audits of its AML systems and procedures at the request of CIMA.

**Compliance and Reporting.** Registered Persons are required to establish and implement cyber security policies, data protection and internal safeguards, operational policies, AML/CTF/PF/TSF policies and outsourcing policies in addition to a variety of plans, assessments, logs and registers. Registered Persons must take steps to protect and secure personal data of clients and ensure communications relating to their business are accurate. Registered Persons are required to maintain a registered office in the Cayman Islands.

**CIMA Audits.** Registered Persons may be subject to CIMA audits. Audits have been conducted in increasing regularity by CIMA on Registered Persons and such persons should ensure they are compliant with all requirements applicable to Registered Persons in advance.

**Auditor’s Report.** CIMA may, at the Registered Person’s expense, require a Registered Person to provide an auditor’s report, prepared by an independent auditor, on the anti-money laundering systems and procedures for compliance with the AML Regulations.

**Economic Substance.** A Registered Person who acts as an investment manager who is “managing securities belonging to another person in circumstances involving the exercise of discretion” (i.e. entities carrying on discretionary fund management under the SIBA) is required to satisfy the applicable economic substance test on an ongoing basis. Please see our Guide on [Economic Substance Requirements – Fund Managers](#).

**Deregistration.** Where a Registered Person ceases operations of its securities investment business it is required to provide notification to CIMA within 21 days and undertake the formal CIMA deregistration process including payment of the deregistration fee of CI\$500 (US\$609.76).

**Penalties.** SIBA provides for extensive penalties up to US\$122,000 as well as criminal penalties. SIBA provides that a person who carries on, or purports to carry on, securities investment business in or from within the Islands for which registration is required who is not a Registered Person, commits an offence and is liable on summary conviction to a fine of US\$122,000 and imprisonment for one year and a US\$12,000 per day penalty for each day the offence continues. SIBA provides for the offences of creation of a false or misleading market and insider dealing. A person convicted of either of these offences is liable to a fine of up to US\$12,500 and imprisonment for up to 7 years. In addition, CIMA has extensive power to impose a significant administrative fine of up to US\$1.2 million for a breach of the AML Regulations.

**Powers of CIMA.** CIMA has broad enforcement powers under SIBA. CIMA has the power to, amongst other things, (i) revoke the licence or cancel the registration; (ii) impose conditions or further conditions upon the licence or amend or revoke any such conditions; (iii) apply to the court for any order which is necessary to protect the interests of clients or creditors of the licensee or registered person; (iv) at the expense of the Registered Person, require the Registered Person to obtain an auditor’s report on its AML systems and procedures for



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compliance with the AML Regulations; (v) require the substitution of any senior officer or trustee of the Registered Person whenever appointed, or the divestment of ownership or control; or (vi) at the expense of the Registered Person, appoint a person to advise the licensee on the proper conduct of its affairs and to report to CIMA thereon).

**CIMA Regulatory Measures.** In addition to the requirements set out under SIBA, a Registered Person is subject to the general regulatory oversight of CIMA which includes the requirement to comply with CIMA's rules, statements of guidance, policies and procedures. Of note, a Registered Person must comply with the Statements of Principles on [Market Conduct](#), [Corporate Governance](#) and [Nature, Accessibility and Retention of Records](#) each of which can be accessed by clicking on the relevant foregoing links.

**AEOI.** Where a Registered Person is a 'financial institution' for FATCA or CRS purposes it must comply with the automatic exchange of information requirements. Financial institutions must have written policies and procedures in place. Please see our Guidance Note on the [Automatic Exchange of Information](#) for further information and see [CRS Enforcement Guidelines](#).

**AML.** All Registered Persons must comply with the anti-money laundering regime in the Cayman Islands.

**Data Privacy.** The Cayman Islands Data Protection Act, 2017 ("DPA"), came into force on 30 September 2019. A Registered Person may be a 'data controller' and in such event must comply with the data protection principles set out in the DPA when processing personal data. It must also ensure those principles are complied with where the personal data is processed on behalf of the data controller (e.g., by the administrator of the fund). Please see our Guidance Note on [Data Protection](#) for further information.



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## Guidance

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:

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