

Registered persons under the Securities Investment Business Act

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Introduction

The Securities Investment Business Act (2020 Revision) (as amended, the **Act**) provides for the regulation of 'securities investment business' carried on in, or from, the Cayman Islands. Under the Act, a person shall not carry on or purport to carry on securities investment business without being either registered or licensed under the Act, unless exempt as a non-registrable person.

Who does the Act apply to?

The Act applies to companies, limited liability companies, foreign companies, partnerships and limited liability partnerships incorporated or registered under the laws of the Cayman Islands through which securities investment business is carried on (whether or not that securities investment business is carried on in the Cayman Islands). It also applies to foreign entities that have established a place of business in the Cayman Islands through which securities investment business is carried on.

What is securities investment business?

For the purposes of the Act, a person carries on securities investment business if that person is engaged in the course of business in any of the following activities:

- dealing in securities as an agent or, where the relevant person holds himself out as dealing in securities for other persons, as principal;
- arranging deals in securities with a view to another person dealing in securities;
- participating in the arrangements for dealing in securities;
- discretionary management of securities belonging to another person;
- advising a person on securities if:
 - the advice is given to that person in their capacity as an investor or as an agent for an investor; and
 - the advice is on the merits of dealing in the security or of exercising a right conferred by a security to deal in securities;
- managing or marketing an EU Connected Fund; or
- acting as a depositary for an EU Connected Fund.

The term 'securities' is widely defined in the Act and includes shares, partnership interests, trust units, debt instruments, warrants, options, futures, contracts for differences and certain virtual assets.

Which activities are excluded from the definition of securities investment business?

The Act provides for excluded activities which are not considered 'securities investment business'. These include, amongst other things, dealing in securities:

- where a person, as principal or agent, deals in securities that evidence indebtedness in relation to any financial accommodation or assurance made by such person or his principal;

- where an entity redeems, or repurchases any of its securities or virtual assets that it has issued;
- for the purposes of risk management;
- for the purposes of, or in connection with, the disposal of goods or supply of services to a customer;
- in the course of carrying on a profession/business not constituting securities investment business where such activity is a necessary or incidental part of other services provided in that profession/business and which it is not separately remunerated for;
- in connection with the operation of an employee share or pension scheme; or
- applying its own proprietary assets on its own behalf.

Who needs to be licensed or registered with CIMA?

The default position under the Act is that an in-scope person carrying on or purporting to carry on securities investment business must be licensed with CIMA. However, the following persons do not need to be licensed and instead are required to register with CIMA as registered persons, which entails a lower degree of regulatory oversight:

- 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 persons,² and/or
 - companies, partnerships or trusts (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
 who have a registered office or a place of business in the Cayman Islands for which services are provided by a person licensed to provide such services; and
- persons who would be required to be licensed under the Act, but who are regulated in relation to securities investment business by a recognised overseas regulatory authority in the country where that business is conducted.

As most in-scope persons fall within one of the exemptions listed above and are accordingly registered persons rather than licensees, the remainder of this Guide focuses on registered persons.

Who is excluded from the CIMA registration requirement?

A non-registrable person is not required to be licensed or to register under the Act. This includes any person 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 (or they are acting for an entity that is otherwise licensed or exempt).

A person participating in a joint enterprise 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 will also be a non-registrable person.

What is the application process for registration?

In order to register, a completed application must be submitted to CIMA via an online portal, together with the registration fee of US\$6,098 and any other information requested by CIMA.

Registration is subject to the applicant:

- being in good standing;

¹ This term is defined in the Act 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 the Act 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.

- having a minimum of two directors³;
- having directors, senior officers and shareholders who are deemed by CIMA to be fit and proper persons; and
- having directors in good standing that are currently registered or licensed in accordance with the Director Registration and Licensing Act, 2014 (as amended, the **DRLA**).

Applicants will also be required to provide details of their anti-money laundering (**AML**) compliance and reporting officers (see below).

What are the ongoing requirements?

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

Direction and management

As detailed above, 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 DRLA.

AML/CFT

The Cayman Islands AML and countering terrorist and proliferation financing (**AML/CFT**) regime requires registered persons to maintain AML/CFT procedures, systems and controls. The requirements include (amongst others) procedures for conducting customer due diligence, record-keeping, suspicious activity reporting and ongoing monitoring and testing of systems for compliance with the AML/CFT regime.

Registered persons are also under an obligation to appoint named individuals to act as the anti-money compliance officer (**AMLCO**), money laundering reporting officer (**MLRO**) and deputy money laundering reporting officer (**DMLRO**). The AMLCO and MLRO may be the same individual. The role of the AMLCO is to oversee the AML/CFT compliance function and ensure the effectiveness of the AML systems, adherence to applicable AML/CFT legislation/guidance and the day-to-day operation of the AML/CFT policies and procedures. The MLRO is the point of contact for all internal suspicious activity reports and will in turn report suspicious activity to the competent authorities. The DMLRO's role is to discharge the MLRO functions in the absence of the MLRO.

Segregation of property

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

Annual declaration and fee

Registered persons are required to file an annual declaration and pay an annual fee of US\$6,098 on or before 15 January in each year following the year of registration. Failure to pay the annual fee will result in a surcharge of one twelfth of the fee for every month that the fee is not paid.

Notification obligations

Registered persons are subject to scrutiny by CIMA in terms of their operation and control. 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; and
- a registered person ceasing to carry on in the Cayman Islands any relevant regulated activity (with notification of its intention to deregister to be made in the prescribed form).

³ A company incorporated under the Companies Act (2023 Revision), may have one corporate director registered under the DRLA.

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.

CIMA's regulatory measures

Any person licensed or registered under the Act must comply with the applicable CIMA regulatory measures, which can be accessed [here](#). These include, amongst others, those relating to corporate governance, outsourcing, retention of records, cybersecurity and internal controls.

Does the economic substance regime apply?

The International Tax Co-operation (Economic Substance) Act (2021 Revision) imposes economic substance requirements on entities registered in the Cayman Islands. Registered persons under the Act are required to consider whether they fall within scope of the Cayman Islands economic substance regime. For more information on this topic, please see our guide on [Economic substance in the Cayman Islands](#).

What is the procedure for deregistration?

If a registered person ceases to carry on any relevant regulated activity, it must notify CIMA of its intention to deregister and file a deregistration application. As stated above, notice of intention to deregister must be provided to CIMA within 21 days of a registered person ceasing to carry on in the Cayman Islands any relevant regulated activity.

Prior to applying for deregistration an applicant must ensure that:

- the relevant fees are paid;
- the applicant's required annual declarations have been submitted; and
- the applicant has no outstanding queries from, or regulatory filings with, CIMA.

The deregistration application must include:

- written notice of the applicant's intention to deregister;
- a completed deregistration form;
- the deregistration fee of US\$610;
- a certified copy of the resolution of its senior officers indicating the date on which the registered person ceased to carry on, as a business, the relevant regulated activities; and
- an affidavit setting out (amongst other things) the reason for the cessation of business, confirmation that all client relationships have been properly terminated or transferred to another service provider and the applicant's intention for the entity after deregistration.

What are CIMA's enforcement powers?

CIMA has a general power to request information from a registered person regarding its business. Where it believes that a registered person is not in compliance with the Act, 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 the Act (including any regulations) or the Anti-Money Laundering Regulations (2023 Revision) (as amended);
- has failed to comply with a condition of its registration or any lawful direction issued by CIMA; or
- has not conducted the direction and management of its business in a fit and proper manner, or 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 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;
- requiring such action to be taken by the registered person as CIMA may specify; and
- imposing an administrative fine under the Cayman Islands administrative fines regime.⁵

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 their 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.

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

Contacts

A full list of contacts specialising in the Securities Investment Business Act can be found [here](#).

⁵ Please see our guide to the [Cayman Islands administrative fines regime](#) for further information

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](#). © 2023 MOURANT OZANNES ALL RIGHTS RESERVED