

# GUIDE TO SECURITIES INVESTMENT BUSINESS IN THE CAYMAN ISLANDS

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## PREFACE

This Guide is a summary of the law relating to securities investment business in the Cayman Islands.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the team, using the [contact information](#) provided at the end of this Guide.

### **Appleby**

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## 1. INTRODUCTION

This Guide is about the regulation of securities investment business in the Cayman Islands and gives some practical examples of how this may affect our clients.

The primary piece of legislation is the Securities Investment Business Law (as revised) (**SIB Law**). The SIB Law provides for the licensing and control of persons engaged in securities investment in or from the Cayman Islands.

## 2. TO WHOM DOES THE SIB LAW APPLY?

The SIB Law applies to:

- companies incorporated in the Cayman Islands;
- partnerships established under Cayman Islands law;
- foreign companies that are registered in the Cayman Islands; and
- other vehicles and individuals that have established a place of business in the Cayman Islands from which securities investment business is carried on.

For companies, partnerships and registered foreign companies, the location of the securities investment business activities is not relevant. It is the fact of incorporation or registration in the Cayman Islands that attracts regulation under the SIB Law.

Some practical examples of the types of activities and locations that would be caught are covered later on.

## 3. WHAT IS SECURITIES INVESTMENT BUSINESS?

The definition of “securities” is very broad and includes shares, stock of any kind, interests in limited and exempted limited partnerships, debt instruments, warrants, options, futures and contracts for differences.

The definition of “securities investment business” includes:

- dealing in securities;
- arranging deals in securities;
- managing securities; and
- advising on securities.

**Dealing in securities** means buying, selling, subscribing for or underwriting securities. The dealing can be as an agent or principal. If acting as principal, it is where the person:

- holds himself out as willing, as principal, to buy, sell or subscribe for securities at generally determined prices, not specific to that particular transaction;
- holds himself out as engaging in the business of underwriting securities; or
- regularly solicits members of the public to induce them (as principals or agents) to deal in securities and the transaction results from such solicitation.

**Arranging deals in securities** includes making arrangements with a view to another person dealing in securities (as principal or agent) or with a view to a person who participates in the arrangements dealing in securities.

**Managing securities** means managing securities belonging to another person on a discretionary basis.

A person is **advising on securities** if the advice is:

- given to the person in his own capacity as investor or potential investor, or as an agent for an investor; or
- on the merits of that person dealing in securities or exercising any right conferred by a security to deal in securities.

In addition, a licence will be required where words are used in any language which connote securities investment business in the description or title of the business in question; or where a representation is made in a document or any other manner that a person is carrying on investment business, or otherwise holds himself out as carrying on investment business.

#### 4. EXCLUDED ACTIVITIES

Certain activities are explicitly excluded that would otherwise fall within the definition of securities investment business. These excluded activities include:

- a person dealing in securities that evidence indebtedness in respect of a loan, guarantee or similar financial accommodation made by that person;
- a company, partnership or trust issuing, redeeming or repurchasing securities that it has issued;
- a company disposing of its treasury shares;
- dealing in options, futures or contracts for differences where none of the parties are individuals and where the sole or main purpose of the transaction is for risk management purposes in connection with non-securities investment business;
- a person dealing in securities in connection with the disposal of goods or supply of services where the supplier of the goods or services does not hold himself out as dealing in securities and does not solicit the public to deal in securities;
- dealing in securities, arranging deals in securities, or advising on securities in the course of any profession or business not otherwise constituting securities investment business where such dealing, arranging or advising is an incidental part of that profession or business and is not separately remunerated;
- an employer dealing in securities in connection with an employee share or pension scheme;
- a company, partnership or trust acting as principal on its own behalf dealing in securities by applying its proprietary assets; and
- making arrangements for the sole purpose of providing finance to enable a person to deal in securities.

#### 5. PERSONS EXEMPTED FROM THE LICENSING REQUIREMENT

The SIB Law exempts certain persons (**Excluded Persons**) who are engaged in securities investment business from the full licensing requirements of the SIB Law, provided that they file an annual declaration with the Cayman Islands Monetary Authority (**CIMA**) and pay an annual fee. Excluded persons are:

- a group company carrying on securities investment business exclusively for one or more members of its group;

- a person carrying on a securities investment business exclusively for a) a sophisticated person (broadly speaking a listed or regulated entity or an experienced person who invests more than US\$100,000 per transaction); or b) a high net worth person (an individual whose net worth is at least US\$1million or any person who has total assets of not less than US\$5 million); or a vehicle whose investors are sophisticated persons or high net worth persons;
- a person who is regulated in respect of securities investment business by a recognised overseas regulatory authority in the country in which the securities investment business is being conducted.

The annual declaration must be filed with CIMA on or before 31 January each year together with the payment of the annual fee.

A registered Excluded Person must have in place anti-money laundering policies and procedures or have delegated that function to a suitably qualified third party. CIMA may require an auditors' report into a registered Excluded Person's anti-money laundering procedures at any time.

## 6. EXCLUDED PERSONS NOT REQUIRED TO HOLD EXEMPTION

In addition to Excluded Persons who must register with CIMA, the following do not need to register with CIMA:

- a person being part of a joint enterprise where the other person carries on securities investment business and such business is carried on for the purpose of the joint enterprise; or
- a person who carries on securities investment business only in the course of acting in the following capacities:
  - director;
  - partner;
  - liquidator (including a provisional liquidator);
  - trustee in bankruptcy;
  - receiver of an estate or company;
  - executor or administrator of an estate; or
  - a trustee acting together with co-trustees in their capacity as such, or acting for a beneficiary under the trust.

In order to qualify for the exemption from registration, the Excluded Person:

- may not be separately remunerated for his securities investment business activities;
- may not hold himself out as carrying on securities investment business otherwise 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 either licensed or exempt under the Law.

Some examples of the types of person who would be exempt from registration are set out below.

## 7. THE LICENSING REQUIREMENTS

Anyone carrying on securities investment business that is not an excluded activity and who is not an Excluded Person must apply to CIMA for a licence. It is an offence to carry on securities investment

business without a licence, punishable by a substantial fine and by imprisonment of one year; and in the case of a continuing offence to a fine which accrues daily each day during which the offence continues.

There is no exemption from licensing for entities that are already licensed under other legislation in the Cayman Islands. Therefore, banks, trust companies, mutual fund managers and other licensed entities will have to apply for a licence under the Law if they engage in securities investment business.

The types of licence are: broker dealer, market maker, securities arranger, securities manager and securities adviser.

CIMA may attach conditions to a licence and the licence may be restricted or unrestricted in terms of the number of clients an applicant may have.

## 8. LICENSING CRITERIA

In order to obtain a licence, the applicant must satisfy CIMA that:

- it will comply with the SIB Law and any regulations made under it;
- it will comply with the Cayman Island's Money Laundering Regulations;
- approval of the application will not be against the public interest;
- it has personnel with the necessary skills, knowledge and experience, and it has such facilities, and such books and records, as CIMA considers appropriate for the scale of business to be undertaken; and
- its senior officers are fit and proper persons.

## 9. OBLIGATIONS OF LICENSEES

The regulations which apply to persons that are licensed under the SIB Law are currently:

- the Securities Investment Business (Conduct of Business) Regulations 2003; and
- the Securities Investment Business (Financial Requirements and Standards) Regulations, 2003.

Copies of these regulations are available upon request.

## 10. COMMON EXAMPLES

To put the SIB Law into context, there follows below a list of typical cases where the person should be asking whether they need to be licensed.

### 10.1 Investment Managers

A Cayman Islands exempted company which provides discretionary asset management services to an investment fund will be carrying on securities investment business. If the manager is providing services only to a fund that is regulated by CIMA then the manager would qualify as an excluded person on the basis that it is providing services only to sophisticated persons. On the other hand, if the manager is providing services to an unregulated fund then in order for the manager qualify as an excluded person the investors in the fund would have to be sophisticated persons or high net worth persons.

The investment manager must register as an excluded person and pay registration and annual fee to CIMA.

## 10.2 Brokers and Market Makers

Brokers will certainly be carrying on securities investment business and so are required to be licensed. It is possible that a broker may be able to rely on the exemptions referred to above. However, it should be noted that the securities investment business must be carried on “exclusively” for the right category of person (i.e. sophisticated, high net worth, etc.).

## 10.3 Cayman Companies issuing their own Shares

This does not constitute securities investment business. It falls within the list of excluded activities.

## 10.4 Buying and Selling Securities for your own Account

A person does not require a licence or a declaration of exemption where he is engaging in securities transactions on his own behalf, as principal, or agent for his principal. The purpose for engaging in securities transactions may be for risk management where the main business is other than securities business. Such activities are not considered securities investment business. Other excluded activities include dealing in securities for employee schemes for the benefit of those employees and their families or by applying one’s proprietary assets to such investment activities.

A word of caution, if the principal holds himself out generally as a market maker, his activities may then fall within the definition of “securities investment business”, which would require the principal to obtain a licence.

## 10.5 General Partner of a Partnership

A Cayman Islands exempted company which is a general partner of an exempted limited partnership established as a private equity fund and which has control and management of the investments of the partnership.

General partners of carrying out securities investment business on behalf of the partnership are specifically excluded from the need to be licensed under the SIB Law as long as they are remunerated through their general partnership interest and not separately for the investment services and provided that they do not hold themselves out as carrying on securities investment business. This category of exemption does not require a declaration of exemption to be filed with CIMA.

Contrast this to a Delaware limited liability company registered as a foreign company which is a general partner of an exempted limited partnership established as a private equity fund. The Delaware LLC also acts as an investment adviser to an onshore fund and is remunerated by that fund for those services.

As a registered foreign company, the Delaware LLC is subject to the SIB Law. Although the role as general partner of the Cayman Islands partnership would mean that the Delaware LLC could be an Excluded Person exempt from registration, the fact that it is carrying on securities investment business in its work for the onshore fund and separately remunerated for that would mean that it would have to register as an Excluded Person. If the onshore fund were not able to qualify as a high net worth individual or sophisticated person, full licencing may be required.

## 10.6 Trustees

Many trustees (other than essentially private trustees not carrying on a business) may be carrying on securities investment business. However, such trustees are likely to be Excluded Persons that are exempt from registration.

## 10.7 Directors of a Company

As is the case with trustees, directors of a company which handle the trading in securities on behalf of the company of which they are directors are likely to be carrying on securities investment business. However, they are likely to be Excluded Persons that are exempt from registration.

## 11. DIRECTOR REGISTRATION AND LICENSING

The Directors Registration and Licensing Law, 2014 imposes registration obligations on directors of registered mutual funds and companies licensed under the SIB law (Covered Entities). "Professional Directors," being individuals holding directorships of 20 or more Covered Entities, are required to apply for a licence under the law. The licence fee for a Professional Director is US\$3,660. Corporate directors holding directorships over a Covered Entity must also be licensed and the fee for a corporate director is US\$9,756. Only where a Professional Director is also a director, employee, member, officer, partner or shareholder of (i) a company which holds a Companies Management Licence or a Mutual Fund Administrator's Licence in the Cayman Islands, or (ii) a Fund Manager that is registered or licensed by a specified overseas regulatory authority and such director appointment arises by virtue of the relationship with the Fund Manager, will the Professional Director be excluded from the requirement to obtain a licence under the law. All other natural persons who are directors of Covered Entities and Professional Directors who are excluded under the circumstances noted above will need to be registered (as opposed to licensed) under the law. The registration fee is US\$854 per director.

## 12. MARKET MANIPULATION AND INSIDER TRADING

In addition to the licensing regime created by the SIB Law, there are also certain offences contained in the SIB Law of creating a false or misleading market and an offence of insider dealing. The offences are relevant in relation to any dealings involving the Cayman Islands Stock Exchange (**CSX**) or securities listed on the CSX.

### 12.1 Creating a False or Misleading Market

The offence of creating a false or misleading market involves creating a false or misleading appearance of active trading in any securities listed on the CSX or a false or misleading appearance with respect to the market for, or the price of, any such securities.

### 12.2 Insider Dealing

Subject to certain defences available under the SIB Law, any individual who has information as an insider is guilty of insider dealing if:

- he deals in securities listed on the CSX that are price-affected securities in relation to the information;
- he encourages another person to deal in securities listed on the CSX that are (whether or not that other person knows it) price affected securities in relation to the information; or
- he discloses the information otherwise than in the proper performance of the functions of his employment, office or profession, to another person.

The territorial scope of the insider dealing offence is restricted as follows:

- to such persons being within the Cayman Islands at the time when he is alleged to have done any act constituting the alleged dealings or disclosed the information or encouraged the dealing; or
- to dealing occurring on the CSX; or



- the alleged recipient of the information or encouragement was within the Cayman Islands at the time when he is alleged to have received the information or encouragement.

Any person who commits an offence under these provisions of the law commits a criminal offence punishable by a fine of up to US\$12,500 and to a term of imprisonment of up to seven years.

For more specific advice on securities investment law in the Cayman Islands, we invite you to contact:

**Cayman Islands**

**Bryan Hunter**

Managing Partner, Cayman Islands

Corporate

+1 345 814 2052

bhunter@applebyglobal.com

For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).