



# **The Cayman Islands Securities Investment Business Law (2019 Revision)**

July 2019



**Disclaimer**

**This document has been prepared by the Maples Group at the invitation of AIMA and is provided to and for AIMA members only. It is intended as indicative guidance only and is not to be taken or treated as a substitute for specific advice, whether legal advice or otherwise.**

**All copyright in this document belongs to the Maples Group and reproduction of part or all of the contents is strictly prohibited unless prior permission is given in writing by the Maples Group and AIMA.**

---



**Table of Contents**

**Background**..... 4

**What has changed for Registered Persons?** ..... 4

**Economic Substance** ..... 5

**Are the Excluded Person and Registered Person categories identical?** ..... 5

**AML/CFT Forms** ..... 6

**Are there any exemptions from the requirement to complete the AML/CFT Forms?** ..... 6

**Next Steps** ..... 6



This briefing describes recent changes to the regulatory framework in the Cayman Islands and the interaction with the Economic Substance requirement. These changes affect persons carrying on securities investment business in the Cayman Islands, in particular fund management companies.

The Cayman Islands Government has passed the Securities Investment Business (Amendment) Law, 2019 (Amendment Law), 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 Securities Investment Business Law (2019 Revision) (SIBL) including Cayman Islands fund managers, investment advisers and broker dealers (Excluded Persons).

Concurrently, the Cayman Islands Monetary Authority (CIMA) has set out a requirement for all currently registered Excluded Persons to complete and submit two detailed forms relating to AML and CFT risks and processes. These forms (AML/CFT Forms) must be submitted through the Cayman Islands registered office of the Excluded Person by 15 August 2019. More information on these requirements is set out below.

## **Background**

The Amendment Law, which was subject to public consultation earlier this year, came into force on 18 June 2019 and was passed in response to various evolving global standards and initiatives applicable to all major financial services jurisdictions. The amendments do not affect fund vehicles but will impact all Excluded Persons. Excluded Persons were those who carried on securities investment business (as defined under SIBL) but met criteria which meant that they were required only to register with CIMA rather than obtaining a full licence under SIBL.

SIBL, as amended by the Amendment Law (Amended SIBL), replaces the existing category of Excluded Persons with a new category, applicable to broadly the same group of entities, who will now instead be required to apply to CIMA for registration as a "registered person" under the Amended SIBL (Registered Persons).

With immediate effect, therefore, it is no longer possible to register as an Excluded Person and, subject to the minor exceptions noted below, persons previously falling in this category must instead apply for registration as a Registered Person. Importantly, persons subject to this requirement must not commence their securities investment business until they are formally approved by CIMA.

Existing Excluded Persons will be required to re-register as Registered Persons by 15 January 2020. This is a simple process involving an online filing. However, as the regime applicable to Registered Persons does differ from that applicable to Excluded Persons, careful consideration of the timing of that re-registration is likely to be required.

## **What has changed for Registered Persons?**

Registered Persons will be subject to a number of CIMA supervisory, inspection and enforcement powers which were previously restricted to those entities holding a full licence (Licensees). The ability of CIMA to refuse an application or impose conditions upon a Registered Person is a key example, as it ensures



that a Registered Person must await formal approval from CIMA before commencing securities investment business. This approval process will include CIMA assessing whether the applicant's shareholders, directors and senior officers are fit and proper persons.

Whereas Excluded Persons were typically required to update CIMA of their information only on an annual basis (when the registration was renewed), Registered Persons will be required to notify CIMA within 21 days of any material change in any information filed by the Registered Person with CIMA. This includes the details of all directors, officers, AML officers, shareholders and beneficial owners, along with the structure chart and details of all affiliates of the Registered Person.

Important distinctions between Registered Persons and Licensees do remain, however, as Registered Persons will not be required to submit annual audited financial statements or business plans, will not be subject to the certain regulations made under SIBL (in relation to Conduct of Business and Financial Requirements), and will not be subject to pre-approval of any change of directors, shareholders or beneficial owners. Nevertheless, CIMA reserves the right to require Registered Persons to remedy or ameliorate any situation which CIMA considers to be unsafe or unsound (including following notification of any change of information, such as ownership or the appointment of directors or officers).

The date for the annual renewal of registration has been brought forward to 15 January in each year (from 31 January), with penalties accruing with immediate effect for any delay.

All Excluded Persons will also need to consider the make-up of their board or other governing body prior to re-registration as the Amended SIBL applies a "four-eyes" principle (the requirement for two natural persons in management roles) on a broader basis. This is particularly relevant for Excluded Persons established as partnerships.

### **Economic Substance**

Another key consequence of the Amendment Law is that a Registered Person who is a "relevant entity" under the International Tax Co-operation (Economic Substance) Law, 2018 (the "ES Law") and who acts as a discretionary manager of an investment fund (as defined under the ES Law) will be deemed to be carrying on the relevant activity of "fund management business" for the purposes of the ES Law and, accordingly, will generally be subject to the economic substance test set out in the ES Law (the "ES Test").

This is only applicable to Licensees and Registered Persons (and not to Excluded Persons) and, accordingly, existing Excluded Persons will wish to consider carefully the timing of their re-registration (bearing in mind the 15 January 2020 deadline). For persons to whom the above criteria apply, the requirement to comply with the ES Test will generally be relevant immediately upon becoming Registered Persons, whether via a new registration or a re-registration.

### **Are the Excluded Person and Registered Person categories identical?**

The Amendment Law has made some changes to the group of persons affected, with the effect that certain categories of Excluded Persons have now been categorised, under Schedule 2A of the Amended SIBL, as "Non-Registrable Persons", including:



- a) single family offices who do not conduct securities investment business for any third parties; and
- b) managers of non-Cayman limited liability companies who carry on securities investment business only in the course of acting in that capacity.

Non-Registrable Persons are expressly deemed not to be carrying on securities investment business for the purposes of the Amended SIBL.

### **AML/CFT Forms**

As noted above, all Excluded Persons who were registered as such prior to 18 June 2019 must submit the AML/CFT Forms to CIMA by 15 August 2019. These forms can only be submitted electronically by an Excluded Person's registered office provider through CIMA's dedicated portal.

CIMA has material sanctions at its disposal for any Excluded Person who fails to file the AML/CFT Forms on time including mandatory de-registration and, potentially, significant fines. This project, and the very short timeline, is dictated by CIMA's need to provide a report to the Caribbean Financial Action Task Force, by September 2019, regarding the risk profile of the Excluded Person sector.

Responses to the AML/CFT Forms could flag up potential breaches of the legal and regulatory requirements applicable to an Excluded Person and may lead to enforcement action. Accordingly, we would strongly encourage Excluded Persons to take legal advice during the completion of the AML/CFT Forms. The Maples Group has assigned a specialist group to provide advice on the completion of the AML/CFT Forms given the potential pitfalls and would be happy to assist in this regard.

### **Are there any exemptions from the requirement to complete the AML/CFT Forms?**

Any person who applied for registration as a Registered Person on or after 18 June 2019 will not be required to complete the AML/CFT Forms.

Excluded Persons will not be required to complete the AML/CFT Forms if they cease to carry on securities investment business and de-register as Excluded Persons prior to 15 August 2019. However, those persons re-registering as a Registered Person will still need to complete the AML/CFT Forms (regardless of the timing of such re-registration).

### **Next Steps**

All Excluded Persons should now consider carefully their next steps.

The limited group of Excluded Persons who do not fall within the category of Registered Persons (see above) should take prompt action to de-register as Excluded Persons. If this is not completed by 15 August 2019, they will need to submit the AML/CFT Forms.

Those Excluded Persons who do fall within the category of Registered Persons and wish to continue conducting securities investment business will need to complete and submit the AML/CFT Forms as a



matter of priority and, in any event, by 15 August 2019. They will then need to re-register as a Registered Person by 15 January 2020 and, if they are discretionary managers of investment funds that meet the definition of a "relevant entity" in the ES Law, will need to consider application of the ES Test upon re-registration.

Some Excluded Persons may wish to complete the AML/CFT Forms in order to maintain their status beyond 15 August 2019, but may look to implement alternative arrangements prior to the re-registration deadline of 15 January 2020.

Others may look to implement alternative arrangements more promptly in order to enable them to de-register as Excluded Persons prior to 15 August 2019 which will remove the requirement to submit the AML/CFT Forms.