

Cayman Islands

INVESTMENT FUNDS

Important regulatory changes for SIBL Excluded Persons

Following the recently enacted Anti-Money Laundering (Amendment) Regulations, 2019 (**AML Regulations**), the Cayman Islands Monetary Authority (**CIMA**) now has enhanced regulatory powers to obtain information from the person or entity carrying out relevant financial business, a person connected to the relevant financial business, or a person reasonably believed to have relevant information. Entities registered with CIMA as Excluded Persons under the Securities Investment Business Law (Revised) (**SIBL**), such as investment managers and investment advisers incorporated in the Cayman Islands, are affected by these regulatory changes in particular and should note the new requirements.

The enhancements underline Cayman Islands' commitment to promote and implement international standards in relation to anti-money laundering (**AML**) and countering the financing of terrorism (**CFT**). One of these enhancements is the introduction of AML/CFT reporting forms for completion by SIBL registrants to enable CIMA to assess the money-laundering/terrorist financing risks associated with each SIBL registrant's operations.

AML/CFT reporting requirements

Following the recently enacted changes to the AML Regulations, Excluded Persons are required to file two forms with CIMA via their registered offices by 15 August 2019:

1. AML/CFT Inherent Risks – Securities form (AIR-157-75)
2. AML/CFT Risk Controls – Securities form (ARC-158-75)

The information requested in the forms primarily relates to client/customer profiles, distribution channels, products and services as well as the geographic location(s) of the business and its clients/customers. The forms are supplemented by guidance notes to aid the completion of the forms and they can be downloaded [here](#) and [here](#).

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The forms are to be reported via CIMA's Regulatory Enhanced Electronic Forms Submission (**REEFS**) [portal](#). Marbury will provide editable forms to SIBL Excluded Persons clients for the collation of the required information.

Penalties for non-compliance

Excluded Persons that do not complete and submit the required two forms by the 15 August deadline run the risk of deregistration.

It must be noted that the filing of these forms is also a pre-requisite for the re-registration of Excluded Persons under the SIBL amendments (see below).

Action required

The forms are extensive and require supporting information and thus Marbury recommends early attention to the forms to enable reporting by the deadline.

In particular, all Excluded Persons must consider their AML programme in terms of policies and procedures' documentation and implementation, and that they have fulfilled all requirements with regards to reporting, AML audit and AML officer appointments. The ARC-158-75 (AML/CFT Risk Controls) form requires that a copy of the current AML manual be submitted along with details such as the dates and results of risk assessments, and board involvement in AML matters.

Marbury is able to provide AML/CFT training for any Excluded Person clients who require assistance in order to confirm the details in form ARC-158-75 (CML/CFT Risk Controls – Securities). For those clients for whom Marbury is responsible for their AML/CFT compliance manuals, they will be receiving revised versions to reflect the recent regulatory updates. Please contact your usual Marbury advisor if you would like to learn more about our related services.

Amendments to the SIBL

The Securities Investment Business (Amendment) Law (**SIB Amendment**) was passed on 5 June 2019 broadening the scope of regulatory and supervisory framework for persons conducting securities investment business. The amendments have significant implications for Excluded Persons registered with CIMA.

1. Excluded Persons are required to provide CIMA with AML/CFT information by filing the Securities Forms (AIR-157-75 & ARC-158-75) via their registered office by 15 August 2019 (see above).
2. Excluded Persons are required to re-register as 'Registered Persons' by 15 January 2020. The re-registration requirements give CIMA discretionary power to assess whether the applicant's shareholders, directors and senior officers are fit and proper persons and refuse registration if they are not satisfied. To re-register, Excluded Persons must be in good standing with CIMA and complete the re-registration form (RRP-160-75) by 15 January 2020.
3. Governance requirements have been introduced so that Registered Persons must have appointed an appropriate number of directors, partners or managers.
 - a. Companies must have at least two individuals as directors registered under the (Cayman Islands) Directors Registration and Licensing Law, 2014 (as amended), or one corporate director licensed under the same law.
 - b. Limited Liability Companies (LLCs) must have at least two managers.

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- c. Exempted Limited Partnerships (ELPs) must have at least two directors (or equivalent officers) of the general partner or, where the general partner is another ELP, of the ultimate general partner.
4. Ongoing requirements: Registered Persons will be required to notify CIMA within 21 days of
 - a. any changes in the information filed by the Registered Person in its application or annual declaration;
 - b. the issue, transfer or disposal of shares or interests in the Registered Person; and
 - c. ceasing to carry on securities investment business (and shall thereupon deregister).

A Registered Person will be required to account separately for the funds and property of each client and for its own funds and property.

Registered Persons will be required to adhere to CIMA's registration and continuing reporting requirements under the SIBL, including the filing of an annual declaration by 15 January each year commencing 2020.

CIMA's broader supervisory and enforcement authority includes the power to refuse or revoke the registration of a Registered Person, to impose conditions on it, to direct it to cease and desist from unsafe or unsound practices, and to request information as to its securities investment business.

Action required

Excluded Persons are advised to consider the re-registration requirements to ensure that they can re-register by the deadline and remain compliant with the SIB Amendment.

The re-registration form will be uploaded to CIMA's REEFS portal and we will contact affected clients in due course regarding the re-registration arrangements.

Implications of Economic Substance legislation on new Registered Persons

Re-registration as a Registered Person under the SIB Amendment may bring those persons carrying on the business of managing securities into the scope of Cayman Islands economic substance legislation under the relevant activity of fund management business. However, this would only be the case as of the date of re-registration.

Investment managers are therefore advised to consider all applicable requirements of both legislations before completing re-registration. For further information on economic substance in the Cayman Islands, see our latest update [here](#).

Marbury is able to conduct an economic substance audit on client structures to enable them to determine whether they are conducting relevant activities and prepare for compliance with the economic substance legislation requirements. Please contact your usual Marbury advisor or info@marburys.com for further information.

Disclaimer

This guide provides an overview of the regulatory changes affecting entities registered with CIMA as Excluded Persons and should not be read as legal advice. For more information please contact Marbury. Links to the Cayman Islands Economic Substance legislation and related Guidance can be found here: http://www.tia.gov.ky/pdf/Economic_Substance.pdf.