



Guide to Securities Investment Business in the Cayman Islands

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PREFACE

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Appleby
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1. The Securities Investment Business Law (2010 Revision)

This Guide is about the Cayman Islands Securities Investment Business Law (2010 Revision) (the “Law”). The Law provides for the licensing and control of persons engaged in securities investment business and introduces criminal liability for creating a false or misleading market and insider dealing.

The Law prescribes licensing requirements for investment managers and advisors and brokers who may have previously been unlicensed. If persons are already licensed or registered under other regulatory laws in the Cayman Islands this does not provide an exemption from the provisions of the Law.

This Guide explains who is caught by the Law, the definition of Securities Investment Business under the Law, and the exclusions and the exemptions from the Law. It also looks at some typical cases of who needs a licence.

2. To Whom Does The Law Apply?

The Law applies to:

- a. companies, general, limited and exempted limited partnerships, and foreign companies incorporated or registered in the Cayman Islands.

such entities are regulated wherever they carry on their securities investment business regardless of whether or not such business is ever carried on in the Cayman Islands. It is the fact of incorporation or registration in the Cayman Islands that attracts regulation under the Law.

Or

- b. any person or entity incorporated anywhere else in the world but with an established place of business in the Cayman Islands through which the securities investment business is carried on.

such persons or entities are regulated only to the extent that their securities investment business is carried on within the Cayman Islands.

3. Securities Investment Business

The Law defines “Securities” to include shares, stock of any kind, interests in limited and exempted limited partnerships, debt instruments, warrants, options, futures and contracts for differences.

Schedule 2 to the Law defines “securities investment business” to include the following activities:

- a. **Dealing in securities** – (i.e. buying, selling, subscribing for or underwriting securities)

- i. as agent;

- ii. as principal where the person entering into that transaction:

- 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.
- b. Arranging deals in securities** – 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.
- c. Managing securities** – belonging to another person in circumstances involving the exercise of discretion.
- d. Advising a person on securities** – if the advice is:
- i. given to the person in his own capacity as investor or potential investor, or as an agent for an investor; or
 - ii. on the merits of that person dealing in securities or exercising any right conferred by a security to deal in securities.

Section 5(3) of the Law also states that 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; 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

Schedule 3 to the Law specifically excludes certain activities from the ambit of the Law i.e. these activities do not constitute securities investment business under the Law so no licence is required and no application for an exemption is required.

The following activities are carved out of the general activities referred in schedule 2 and are not considered securities investment business:

a. Dealing in securities –

- i. whereby a person as principal or agent buys, sells, subscribes for or underwrites securities and such securities create or acknowledge indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation;
- ii. where a company, partnership or trust issues, redeems or repurchases any of its shares, debt instruments or warrants (but not options, futures or contracts for differences);
- iii. where the sole or main purpose in buying, selling, underwriting or subscribing for securities is:

- to manage risk;
- where the buying, selling, underwriting or subscribing for securities is for the purpose of, or in connection with, the disposal of goods or supply of services and the supplier does not generally deal in securities;
- where dealing in securities is an incidental activity of carrying on any profession or business (which would not otherwise be considered securities investment business) and is not separately remunerated;
- where the buying, selling, underwriting or subscribing for securities is in connection with the operation of an employee share or pension scheme; or
- where a company, partnership or trust on its own behalf deals in securities by applying its proprietary assets.

b. Arranging deals in securities -

- i. where a person arranges his own deals;
- ii. where a person makes arrangements as an incidental part of a profession or business (which would not otherwise be considered securities investment business) and is not separately remunerated;
- iii. where arrangements are made to provide a means of communication between parties to a transaction;
- iv. arrangements in connection with securities evidencing indebtedness or the issuance of securities;
- v. making arrangements with the sole purpose of providing finance to enable someone else to deal in securities;
- vi. making arrangements to introduce persons to each other with a view to the provision of independent service or the person to whom the introductions are to be made is an Excluded Person (see below);
- vii. making arrangements in connection with the disposal of goods or supply of services; or
- ix. arrangements in connection with the operation of a share or pension scheme.

c. Managing securities - where a person manages securities that are or are to be managed in connection with the disposal of goods or supply of services.

d. Advising on securities - advising on securities in connection with disposal of goods or supply of services, as part of a media communication or incidentally to any legal, accounting or other advice.

5. Can I Be Exempted?

a. Excluded persons required to hold exemption

The Law specifically exempts the following persons from the ambit of the Law, provided that in each case they file an annual declaration of exemption with the Cayman Islands Monetary Authority (“CIMA”) and pay an annual fee (currently US\$4,688.29):

- i. One of a group of companies carrying on securities investment business exclusively for one or more members of its group (to include direct or indirect subsidiaries of a holding company);

- ii. A person (having a registered office in the Cayman Islands for which services are provided by a licensed person) carrying on a securities investment business exclusively for:
 - A sophisticated person a person regulated by CIMA, such as a Cayman registered mutual fund, or an overseas regulatory authority; or a person whose securities are listed on a recognized security exchange; or a person who by virtue of knowledge and experience in financial and business matters is reasonably regarded as capable of evaluating the merits of a proposed transaction and each single transaction has a value of at least US\$100,000);
 - A high net worth person (an individual whose net worth is at least US\$1million or any person (which term would include any individual or company) who has total assets of not less than US\$5 million); or
 - A company, partnership or trust (whether or not regulated as a mutual fund) of which the shareholders, unit holders or limited partners are one or more persons who are sophisticated persons or high net worth persons.
- iii. A person who is regulated in respect of securities investment business by a recognised overseas regulatory authority in the country or territory (other than the Cayman Islands) in which the securities investment business is being conducted.

The annual declaration must be filed with CIMA on or before 31 January in each year together with payment of US\$4,688.29.

b. Excluded persons not required to hold exemption

The Law specifically exempts the following persons from its ambit without requiring an annual declaration or fee:

- i. 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.
- ii. The Cayman Islands Stock Exchange, the Cayman Islands Monetary Authority, the Cayman Islands Government or any public authority created by them.
- iii. 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, provided that in each case such person is not separately remunerated for his securities investment business activities; does 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.

6. The Licensing Requirements

Unless falling under the heads of excluded activity or excluded person as set out above, any person carrying on securities investment business must hold a license granted under the Law. There is no exemption from licensing for entities 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 (and do not fall under the exempted heads).

License fees - License fees have been set by the Securities Investment Business (Licence Applications and Fees) Regulations, 2003 which came into force on 29th July 2003 and are currently as follows:

Regulated Activity	Application Fee US\$ (CIS)	Fee payable on first grant US\$ (CIS)	Annual Renewal US\$ (CIS)
(a) (i) Broker dealer	609.76 (500)	9756.10 (8000)	9756.10 (8000)
(ii) if Broker is member of Cayman Islands Stock Exchange	304.88 (250)	2439.02 (2000)	2439.02 (2000)
(b) Securities arranger	304.88 (250)	4878.04 (4000)	4878.04 (4000)
(c) Securities manager	609.76 (500)	9756.10 (8000)	9756.10 (8000)
(d) Securities advisor	609.76 (500)	9756.10 (8000)	9756.10 (8000)
(e) Market maker	609.76 (500)	9756.10 (8000)	9756.10 (8000)
(f) Any additional licence after the first, of (a) and (c) to (e) above, for each licence	609.76 (500)	4878.04 (4000)	4878.04 (4000)

(g)	Restricted licence (all categories)	609.76 (500)	4878.04 (4000)	4878.04 (4000)
(h)	any one licence of (a)(i) and (c) to (e) above in combination with a licence held by the applicant or the parent of the applicant under any other of the regulatory laws	182.93 (150)	5487.80 (4500)	5487.80 (4500)

The renewal fee is payable by 15th January each year.

Conditions of licence

A license may be unconditional or subject to such conditions as CIMA considers appropriate and may be restricted or unrestricted in terms of the number of clients an applicant may have.

Offences

The carrying on of securities investment business without a license is a criminal offence and punishable by a fine of US\$125,000 and by imprisonment of one year; and in the case of a continuing offence to a fine of US\$12,500 for each day during which the offence continues.

7. Obligations Of Licensees

Both the law and the Securities Investment Business (Conduct of Business) Regulations 2003 impose a range of requirements on licensees, some of which may give rise to difficulties of application or interpretation. For example, there is an obligation to act with ‘high standards of market conduct, integrity and fair dealing’ in the conduct of securities investment business. Disputes may arise as to precisely what this means. Licensees must also act with ‘due skill, care and diligence’ when providing services: it is not clear whether this is any different from the duty to exercise reasonable care and skill under the law of negligence or the similar duty normally implied into a contract for the provision of services. It may at least give rise to a separate cause of action for breach of statutory duty.

CIMA must be provided with considerable information, including details of professional indemnity, professional liability and business interruption insurance that licensees have to maintain. CIMA must also be notified of, among other things, the receipt of a winding up petition, the appointment of statutory inspectors, resignations or dismissal of senior officers, the breakdown in administration procedures or any breaches of the Regulations. Importantly, notification is required where the licensee is aware of an *actual* or a *contingent* claim against it where the amount claimed or disputed is likely to exceed 10% of the licensee’s financial resources. Notice must also be given where a licensee’s financial resources fall below set thresholds. The fact that a licensee is regulated by CIMA must be stated in all correspondence, advertisements and other documents. The Regulations also stipulate what a licensee’s client agreements must include. Licensees will also have to maintain procedures to restrict the acceptance of gifts or other inducements by staff, and to ensure proper segregation and handling of clients’ money, as well as for the keeping of records and the handling of complaints.

The Regulations also set standards as to the content of advertisements to be published by licensees and relating to written agreements to be entered into between them and their clients.

The Securities Investment Business (Financial Requirements and Standards) Regulations, 2003 requires the licensee to maintain adequate accounting records and internal systems and controls and sets down requirements relating to reconciliations of accounts. In addition it requires licensees to maintain specified financial resources and report to CIMA particular transactions affecting its financial resources.

Further, under the Law itself, CIMA approval is required to transfer or dispose of any shares or interests of a company or partnership licensee. A licensee must separately account for the funds and property of each client and for the licensee's own funds and property. A licensee must have its accounts audited annually by an approved auditor and filed within six months of the end of a licensee's financial year. The Law provides that a licensee requires CIMA approval to open a subsidiary, branch, agency or representative office or change its name.

8. Contracts With Unlicensed Parties

A contract, obligation, transaction or instrument entered into by any person shall not be rendered unenforceable merely because it is entered into in connection with securities investment business carried on by that person who should otherwise hold a licence under the Law.

9. Common Examples

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

Investment managers

An investment manager who is a person that is subject to the Law (essentially a person incorporated or registered in the Cayman Islands or who has a place of business in the Cayman Islands) and who is providing discretionary asset management services to an investment fund will be carrying on securities investment business under the Law. If the manager is providing services only to a fund that is regulated by CIMA then the fund 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 fund to qualify as an excluded person the investors in the fund would have to be sophisticated persons or high net worth persons. Another useful exemption may apply if the manager is providing services exclusively to one or more members of its corporate group. It should be noted that if the manager relies on any of the exemptions mentioned above it will need to file a declaration of exemption with CIMA and pay an annual fee of US\$4,688.29.

Investment advisers

Although previously unregulated by licensing laws in the Cayman Islands, investment advisers are regulated under the Law. However, they may rely on the same exemptions as those referred to above for investment managers.

Brokers and market makers

Brokers will certainly be carrying on securities investment business and so are required to be licenced under the Law. It is possible that reliance can be placed 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.).

Cayman companies issuing their own shares

This does not constitute securities investment business. It falls within the list of excluded activities which includes a company, issuing, redeeming or repurchasing any of its shares (as well as debt instruments and warrants).

Buying and selling securities for your own account

This is another activity where the Law does not apply. 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 under the Law. 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.

General partners of partnership funds

General partners of partnership funds carrying out securities investment business on behalf of the partnership are specifically excluded from the need to be licensed under the 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.

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 exempted subject to the provisions described above (i.e. no holding out/no separate remuneration).

10. Double Licensing Requirements

Some of the above examples have shown that a person who is just carrying on securities investment business and now regulated under the Law should de-register under any other regulatory laws. This could result in a significant cost saving in the level of fees paid to CIMA. If the person’s activities extend beyond securities investment business and they are required to be regulated under other laws in relation to other such activities then they must ensure that they are appropriately licensed.

11. Market Manipulation And Insider Trading

The Law also creates a new general offence of creating a false or misleading market and an offence of insider dealing.

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 Cayman Islands Stock Exchange or a false or misleading appearance with respect to the market for, or the price of, any such securities.

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

- a. he deals in securities listed on the Cayman Islands Stock Exchange that are price-affected securities in relation to the information;
- b. he encourages another person to deal in securities listed on the Cayman Islands Stock Exchange that are (whether or not that other person knows it) price affected securities in relation to the information; or
- c. 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:

- a. 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
- b. to dealing occurring on The Cayman Islands Stock Exchange; or
- c. 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 business in the Cayman Islands, we invite you to contact:

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