

## Snapshot: SIBA licensees and registered persons in the Cayman Islands

Insights - 08/12/2022

For entities licensed or registered under the Securities Investment Business Act (Revised) (**SIBA**), there are upcoming deadlines in December and January that will need to be observed in order to ensure compliance with applicable law and regulations in the Cayman Islands. For the avoidance of doubt, this Snapshot refers to SIBA licensees and registered persons only and not to regulated investment funds.

Anti-money laundering (**AML**) surveys recently issued by the Cayman Islands Monetary Authority (**CIMA**) to entities licensed or registered under SIBA have again signalled CIMA's expectation that such entities have policies and procedures in place to ensure that they operate in compliance with applicable laws and regulations in the Cayman Islands, including – where appropriate – CIMA's published rules (**Rules**) and statements of guidance (**SOG**).

### | Compliance policies and procedures

For SIBA licensees and registered persons, the relevant Rules and SOG issued by CIMA include (but are not limited to) those in respect of:

- AML/countering the financing of terrorism/countering proliferation financing
- corporate governance
- cybersecurity
- international financial sanctions
- internal controls
- nature, accessibility and retention of records
- outsourcing

- succession planning.

These Rules and SOG effectively provide that SIBA licensees and registered persons should adopt and implement policies and procedures designed to ensure compliance with their legal and regulatory obligations in the Cayman Islands.

Such policies and procedures are routinely requested for review by CIMA as part of on-site compliance inspection processes and CIMA has communicated that SIBA licensees and registered persons should put the policies and procedures referred to in the above Rules and SOG in place.

## AML audits

In January 2019, CIMA announced that it was requesting entities registered to conduct securities investment business – under and pursuant to SIBA – to have their AML systems and procedures audited, by suitably qualified entities, for compliance with the Cayman AML Regulations.

Whilst in larger organisations this AML audit may be carried out by an internal audit function, it has become increasingly clear through 2022 that CIMA generally expects AML audits on SIBA registered persons to be conducted by persons independent of the underlying business and activities of the relevant SIBA registered person, and that the persons carrying out, and signing off on, the AML audit for a SIBA registered person should not be the same persons, or part of the same team as, such SIBA registered person's AML officers.

## Annual declarations and annual fees

All SIBA licensees and registered persons are required to file an annual declaration with (and pay a prescribed annual fee to) CIMA by 15 January each year.<sup>[1]</sup>

CIMA has powers, under the Monetary Authority Act (Revised) (**MAA**), to impose administrative fines for breaches of certain prescribed provisions under the MAA (**Administrative Fines Regime**), including the above annual filing requirement.

Failure to file an annual declaration with (and pay the prescribed annual fee to) CIMA by the above annual filing deadline (under and in accordance with SIBA) may therefore attract enforcement exposure under the Administrative Fines Regime – the prescribed fine, under the MAA, for each 'minor' breach such as this being CI\$5,000.

## Economic Substance

The International Tax Co-operation (Economic Substance) Act (Revised) (**ES Act**) applies to "relevant entities" (as defined under and for the purposes of the ES Act) that are licensed or

otherwise authorised to carry on securities investment business under SIBA – if they manage securities for an investment fund in circumstances involving the exercise of discretion.

A SIBA licensee and/or registered person that has acted as a discretionary investment manager for an investment fund during its 2021 financial year will therefore also need to file an Economic Substance Return (**ESR**) in respect of its 2021 financial year (**2021 ESR**) with the Cayman Islands Department for International Tax Cooperation (**DITC**) within twelve months after the last day of its 2021 financial year (i.e. its financial year commencing on or after 1 January 2021).

Any such entities with a financial year end of 31 December will therefore need to file their 2021 ESR with the DITC by no later than 31 December 2022 – noting that, under the ES Act, a penalty of CI\$5,000 can be imposed by the DITC for a late ESR filing, together with an additional penalty of CI\$500 for each day that a late ESR remains outstanding.<sup>[2]</sup>

## **How can Ogier assist?**

Ogier's Regulatory team has extensive experience advising SIBA licensees and registered persons in relation to their obligations under SIBA and the ES Act, including in relation to the preparation and adoption of compliance policies and procedures; and the completion and submission of both SIBA Annual Declarations and, where required, Economic Substance Returns.

Ogier Regulatory Consulting is an independent team providing a range of regulatory consulting services, including Cayman Islands AML audit services. Working alongside Ogier's global team of regulatory law specialists, advising on which and how laws must be complied with, Ogier Regulatory Consulting can advise on the operational implementation of programmes to meet those legal requirements.

For further information on this please reach out to the author, or to your usual Ogier contact.

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<sup>[1]</sup> This date falls on a Sunday in 2023 and so all 2023 annual declarations due by this date under SIBA should be submitted, together with the applicable annual fee, to CIMA by no later than Friday 13 January 2023.

<sup>[2]</sup> This date falls on a Saturday and so all 2021 ESR filings due by this date under the ES Act should be submitted to the DITC by no later than Friday 30 December 2022.

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