The purpose of this memorandum is to provide a summary of the key features of the Securities Investment Business Law (Revised) (SIB Law) and to give examples of instances where it affects entities engaged in securities investment business in or from the Cayman Islands.

This memorandum is intended to provide a general summary of the position under Cayman Islands law as at the date shown on the cover; it is not to be taken as specific legal advice applicable to particular issues or circumstances. Anyone who thinks they may be impacted by the SIB Law should contact one of the Ogier partners listed on the last page.

INTRODUCTION

The SIB Law regulates “securities investment business” (as defined) and provides a regulatory regime for those engaged in securities investment business in or from the Cayman Islands.

The SIB Law has potential application to the following classes of persons:

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

Any such person carries on securities investment business if that person is engaged, in the course of business, in any one or more of the activities set forth in Schedule 2 to the SIB Law, not being one of the excluded activities set forth in Schedule 3.

Unless exempted by the SIB Law, a person who so carries on, or purports to carry on, securities investment business must hold a licence. The SIB Law is intended to ensure that only fit and proper persons, acting in accordance with acceptable standards of conduct, are able to engage in securities investment business.

WHAT IS SECURITIES INVESTMENT BUSINESS?

The included activities set forth in Schedule 2

Subject to the excluded activities set forth in Schedule 3, Schedule 2 to the SIB Law provides that the following activities are securities investment business for the purposes of the SIB Law:

Dealing in securities

(a) Dealing in securities as an agent.

(b) Dealing in securities as a principal where the person dealing (i.e. entering into a transaction):
(i) holds himself out as dealing in securities at prices determined by him generally and continuously rather than in respect of each particular transaction;

(ii) holds himself out as engaging in the business of underwriting securities; or

(iii) regularly solicits members of the public to deal in securities and such transaction results from such solicitations.

Arranging deals in securities
(a) Making arrangements with a view to:
(i) another person dealing in securities; or
(ii) a person who participates in the arrangements dealing in securities.

Managing securities
(a) Managing securities belonging to another person on a discretionary basis.

Advising on securities
(a) Advising a person on securities if the advice:
(i) is given to the person in his capacity as an investor or potential investor; and
(ii) relates to the merits of dealing in a particular security or exercising any right conferred by a security to deal in a security.

For the purpose of the foregoing and the SIB Law generally, “dealing in securities” means buying, selling, subscribing for or underwriting securities; and “securities” is defined broadly to mean, in effect, any of the following (as more fully described in Schedule 1 to the SIB Law): equity interests in a company, limited partnership or unit trust; debt instruments; warrants; options; futures; and contracts for differences.

The excluded activities set forth in Schedule 3

Schedule 3 to the SIB Law lists certain activities (Excluded Activities) that would otherwise fall within the definition of securities investment business but which are specifically excluded. Accordingly, any person who engages in these activities only (and not in any other activities that constitute securities investment business) will fall outside the scope of the SIB Law and will not be regulated in respect of such activities. These Excluded Activities are:

- 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.

PERSONS EXEMPTED FROM LICENSING

The classes of excluded persons listed in Schedule 4

Schedule 4 to the SIB Law exempts certain classes of persons, listed below, (Excluded Persons) engaged in securities investment business from the licensing requirements, but such persons are nonetheless subject to certain provisions of the SIB Law. Any such person may be required by the Cayman Islands Monetary Authority (CIMA) at any time to provide an auditors’ report on its anti-money laundering systems and procedures for compliance with Cayman’s Money Laundering Regulations (Revised). The persons listed at paragraphs (a) to (c) below must make an exemption filing (described below) and pay an annual fee to CIMA.

(a) a group company that carries on securities investment business exclusively for one or more companies within the same group;

(b) a person who carries on securities investment business exclusively for a sophisticated person (broadly, a listed or regulated entity, or an experienced investor that invests more than US$100,000 per transaction), a high net worth person (i.e. an individual with a net worth of at least US$1,000,000 or a person with total assets of at least US$5,000,000) or an entity whose investors are either sophisticated persons or high net worth persons;

(c) a person engaged in securities investment business but who is regulated in respect of such business by a recognised regulatory authority in the country in which the securities investment business is being conducted;

(d) a person participating in a joint enterprise with the person carrying on securities investment business where the activities constituting such securities investment business are to be carried on for the purposes of or in connection with that joint enterprise;

(e) a person carrying on securities investment business only in the course of acting in any of the following capacities: (i) director, (ii) partner, (iii) liquidator (including a provisional liquidator), (iv) trustee in bankruptcy (v) receiver of an estate or company, (vi) executor or administrator of an estate, and (vii) 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 that person:

- is not separately remunerated for any of the activities which constitute the carrying on of such securities investment business other than as part of any remuneration the person receives for acting in that capacity;

- does not hold himself out as carrying on securities investment business other 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 licensed or exempted from licensing under the SIB Law.

Exemption filings for certain Excluded Persons

Persons falling within one of the exemptions set forth in paragraphs (a) to (c) above must file a declaration in the prescribed form (Exemption Filing) stating which exemption applies to it and pay a fee of US$6,098 initially on filing and thereafter annually before 31 January each year.

LICENSING

Penalties for breach of the requirement to be licensed

Any person engaged in securities investment business (other than Excluded Activities) who is not an Excluded Person must apply to CIMA for a licence under the SIB Law. Any such person who carries on or purports to carry on securities investment business without holding a current licence is guilty of an offence and liable on summary conviction to a fine of US$122,000 and to imprisonment for one year, and, in the case of a continuing offence, to a fine of US$12,200 for each day during which the offence continues.

Types and scope of licences

Licences are available in the following categories: Broker-dealer, Market maker, Securities arranger, Securities manager and Securities adviser. Licences other than those for Market makers and Securities arrangers may be unrestricted or restricted; a restricted licence limits the clients with whom the licensee may conduct business, either in number or by setting a minimum value of a client’s investment.

A licence must specify one or more of the activities set out in the Schedule 2 to the SIB Law (and summarised above) in which the licensee is permitted to engage. In granting the licence, CIMA may attach conditions (i) limiting the nature and scope of securities investment business that may be carried on, (ii) specifying whether or not the licensee may hold clients’ assets, and (iii) requiring the licensee, or a senior officer or manager of the licensee, to acquire and maintain membership of a recognised securities exchange or a recognised securities organisation.

The fee for a licence application ranges from US$305 to US$610; and, depending on the licensed activity, the fee payable upon the initial grant and any renewal in each category ranges from US$2,440 to US$9,756, and depends upon the number of categories in which the licensee is licensed, and whether it is also licensed under another regulatory law.

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 Cayman’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;
• its senior officers are fit and proper persons.

Licensing regulations

The Governor-in-Council may, after consultation with CIMA, make regulations pursuant to the SIB Law to regulate the conduct of securities investment business.

Currently, the following regulations (collectively, the Regulations) apply:

The Securities Investment Business (Conduct of Business) Regulations, 2003

These regulations deal with a broad range of matters relating to the conduct of business, such as standards for record keeping and reporting to CIMA, disclosure requirements in respect of gifts and other inducements, insurance cover, standards for advertising or promoting securities investment business, and specific standards of conduct for dealing with clients and for the safeguarding of clients’ assets and money.


These regulations impose requirements on licensees to maintain adequate accounting records and risk-management processes, to perform account reconciliations at certain intervals (including on every business day for the licensee’s own margin accounts with intermediaries) and to meet certain financial-resources requirements at differing levels depending on the specific securities investment business being undertaken.

The Securities Investment Business (Licence Applications and Fees) Regulations, 2003

These regulations set out the forms of application and the fees payable on application and on the grant of a licence, and annually thereafter, for licensees engaged in the different types of licensed activity.

The Regulations provide that where a licensee is also licensed under another regulatory law, and there is a conflict between the requirements of the Regulations and the requirements under that other regulatory law or any regulations made thereunder, or any associated market practice, CIMA may waive or modify the application of the Regulations to the extent that, in its opinion, the proper conduct of securities investment business by the licensee is not adversely affected.

The Regulations provide that the contravention of certain provisions constitutes an offence and prescribe penalties for each such offence. CIMA has also issued Guidance Notes for the purpose of giving practical guidance with respect to the SIB Law and the Regulations.

Restrictions on licensees

In addition to complying with the provisions of the SIB Law and the Regulations in the conduct of its securities investment business, a licensee is subject to certain more general obligations and restrictions.

These are broadly as follows:

Audit
A licensee must be audited annually and at such other times as CIMA may require, and, within six months of its financial year end, it must file with CIMA: (a) audited accounts for that financial year and (b) a certificate of compliance with the provisions of the SIB Law and the Regulations. A licensee may not change its auditor without the prior written consent of CIMA.

Auditors must give notice to CIMA and to the licensee if they have reasonable grounds to believe that the licensee is (a) unable to meet its obligations as they fall due, (b) in breach of the SIB Law or Regulations, (c) carrying on business in a manner prejudicial to its clients or is winding up its business in a manner prejudicial to its clients or creditors, or (d) failing to maintain adequate accounting records.

**Places of business**

A licensee must not, without the prior written approval of CIMA, open outside the Cayman Islands a subsidiary, branch, agency or representative office. And a licensee must notify CIMA immediately of any change of address of its place of business.

**Name**

A licensee may only change its name with the prior written approval of CIMA. CIMA may also require a licensee to change its name if it considers the name may be misleading due to resemblance to another’s name or for other reasons.

**Directors and officers**

A licensee that is a company or a corporate general partner of a limited partnership must have at least two directors or, if the licensee is a company that does not have directors, at least two managers. No alterations in the senior officers of a licensee that is a company may be made without the prior written approval of CIMA. A licensee must immediately remove or replace a senior officer who is convicted in any country of an offence involving dishonesty.

**Change in ownership**

No shares or partnership interests in a licensee may be issued or transferred without the prior approval of CIMA. CIMA may exempt licensees whose shares are publicly traded on a recognised securities exchange subject to conditions requiring notification of acquisitions of more than 10% of the shares or voting rights and the provision of information to enable CIMA to assess whether the acquirers are fit and proper persons.

**Enforcement by CIMA**

The SIB Law provides CIMA with a broad range of enforcement powers. These include: imposing conditions on the grant of a licence, applying for injunctions or restitution orders to deal with disgorgement of client assets, requiring the substitution of an officer or director, divesting ownership or control acquired in breach of the SIB Law, and revoking a licence. CIMA may also, at the expense of the licensee, appoint a person to advise the licensee on the proper conduct of its affairs and to report to CIMA, and CIMA may appoint a controller with the same powers of those of a receiver or manager of a business appointed under the Bankruptcy Law. A licensee may appeal to the Grand Court against any decision of CIMA to revoke its licence or to appoint a controller of its business.

**Interaction with other laws**

As the SIB Law came into effect long after the other regulatory laws in the Cayman Islands, there is some overlap with the provisions of those other laws. To deal with this, the SIB Law
provides that a licensee under the SIB Law or an Excluded Person (see above) is not required to be licensed under any of the following laws (the Regulatory Laws) in respect of securities investment business:

- Local Companies (Control) Law
- Banks and Trust Companies Law
- Insurance Law
- Companies Management Law
- Mutual Funds Law
- Trade and Business Licensing Law.

As noted above, where a licensee's obligations under the Regulations conflict with the obligations imposed by a Regulatory Law, CIMA may waive or modify the application of the Regulations to the extent that, in CIMA's opinion, the proper conduct of securities investment business by the licensee is not adversely affected.

**False markets and insider dealing**

The SIB Law establishes offences relating to the creation of a false or misleading market in listed securities and to insider dealing in listed securities. For this purpose, listed securities are securities listed on the Cayman Islands Stock Exchange. Dealing with each of these offences in turn:

Anyone who creates or does anything calculated to create a false or misleading appearance of active trading in any listed securities or a false or misleading appearance with respect to the market for, or the price of, any such securities, is guilty of an offence.

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

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

Listed securities are price-affected if the inside information in relation to such securities would, if made public, be likely to have a significant impact on the price or value of the listed securities.

Any person who commits either of the foregoing offences is liable, on summary conviction, to a fine of US$4,878 and to imprisonment for one year and, on conviction on indictment, to a fine of US$12,200 and to imprisonment for seven years.

**EXAMPLES OF THE APPLICATION AND NON-APPLICATION OF THE SIB LAW**

There follow some examples of situations where the SIB Law applies and of situations where it does not apply.

**Investment managers**
Investment managers (if their only activity is securities investment business) can take advantage of the broad exemptions available under the SIB Law.

The principal exemptions likely to apply are where an investment manager is providing discretionary-management services exclusively to any one of more of the following:

- an entity within the same group of companies;
- a sophisticated person (broadly, a listed or regulated entity), which includes a mutual fund registered with CIMA, or an experienced investor (i.e. one who invests more than US$100,000 per transaction);
- a high net worth person (i.e. an individual with a net worth of at least US$1,000,000 or a person with total assets of at least US$5,000,000);
- an entity whose investors are either sophisticated persons or high net worth persons.

Where any such exemptions apply, the investment manager needs to make an annual Exemption Filing as detailed above.

**Investment advisers**

Persons providing investment advice (as opposed to discretionary management) in or from the Cayman Islands need to be licensed under the SIB Law, unless they are Excluded Persons. The principal exemptions likely to apply are the same as those likely to apply to investment managers.

**General partners**

There is a specific exemption under Schedule 4 to the SIB Law for partners. Looking specifically at Cayman exempted limited partnerships, a general partner of such a partnership whose role involves securities investment business (because it manages the partnership’s investments) may qualify as an Excluded Person (and so does not require a licence) if the general partner satisfies the following conditions: it carries on securities investment business only in its capacity as general partner; it does not receive separate remuneration for that part of its duties that constitutes securities investment business; and it does not hold itself out as carrying on securities investment business, other than as a necessary or incidental part of performing its functions as general partner.

**Trustees**

The position of trustees is similar to that of general partners. By virtue of acting as a trustee most trustees are engaged in securities investment business. However, a trustee fails as an Excluded Person and, therefore is exempted from the requirement to be licensed if it satisfies the following conditions: it does not hold itself out as carrying on securities investment business, other than as a necessary or incidental part of acting as a trustee; and it is not separately remunerated for that part of its trustee’s duties that constitute securities investment business.

But, while most trustees are not required to be licensed under the SIB Law, they are usually required to be licensed under the Banks and Trust Companies Law (Revised).

**Brokers and market-makers**
Unless a broker or market-maker can avail itself of an exemption, it needs to be licensed under the SIB Law.

The principal applicable exemptions are likely to be (i) carrying on securities investment business exclusively for companies within the same group or exclusively for sophisticated persons or high net worth persons or (ii) where the broker or market maker is regulated in respect of securities investment business by a recognised regulatory authority in the country in which the securities investment business is being conducted.

**Persons dealing in securities for their own account**

Persons who deal in securities as principals for their own account do not carry on securities investment business for the purposes of the SIB Law if they satisfy each of the following conditions: they do not make a market in securities; they do not hold themselves out as underwriting securities; and they do not solicit members of the public to deal in securities.

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**About Ogier**

Ogier provides practical advice on BVI, Cayman Islands, Guernsey, Jersey and Luxembourg law through its global network of offices. Ours is the only firm to advise on these five laws. We regularly win awards for the quality of our client service, our work and our people.

**Disclaimer**

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