

# LEGAL UPDATE

## Cayman Investment Managers:

### Deregistration of a Registered Person under SIBL

---

The Securities Investment Business (Registration and Deregistration) Regulations, 2019 (the “**Regulations**”) published on 24 October 2019 bring much needed clarifications with respect to the new regime of Registered Persons under the Securities Investment Business Law (2019 Revision) as amended (“**SIBL**”). While most Cayman Islands investment managers and investment advisers (“**SIBL Managers and/or Advisers**”) have been on track to becoming Registered Persons since 18 June 2019, when the new SIBL regime for Registered Persons was first introduced, the original guidance mainly concerned (1) the appointment of a second director to each SIBL Manager and/or Adviser, (2) the continuing reporting obligations to the Cayman Islands Monetary Authority (“**CIMA**”), and (3) the new requirement that CIMA be satisfied that the directors, shareholders and senior officers are fit and proper persons.

In brief, the Regulations confirm (1) the proper procedures to be followed for registration and deregistration, depending on the situation of each applicant, and (2) the fees to be paid to CIMA (CI\$5,000, or approx. US\$6,098, for first registration and thereafter on an annual basis, and CI\$500 or approx. US\$610 for deregistration). One of the impacts of the Economic Substance Law in the Cayman Islands has been to cause an increase in the number of Investment Managers winding down their affairs and de-registering from CIMA before 31 December 2019 in order to avoid CIMA fees for 2020 and to avoid the requirements of the Economic Substance Law which will require full compliance with effect from 15 January 2020. The Regulations provide much needed guidance in this respect.

#### **General Procedure for Deregistration:**

Prior to applying for deregistration and in order to avoid delays in the processing of the application, a Registered Person is required to ensure that all fees are paid, the annual declarations have been submitted and there are no outstanding queries from, or regulatory filings with, CIMA. The following documents are required for de-registration:

- (i) a written notice of the intention to deregister;
- (ii) the deregistration fee of or approx. US\$610;
- (iii) a certified copy of the Board resolution which indicates the date on which the Registered Person has ceased to carry on as a SIBL Manager and/or Adviser ; and
- (iv) an affidavit by a senior officer of the SIBL Manager and/or Adviser that attests to the following:
  - a. the reason for the cessation of business;
  - b. that, as far as the senior officer is aware, the applicant has operated in accordance with its Articles of Association;
  - c. that all client relationships have been properly terminated or transferred<sup>1</sup> to another service provider;

- d. that the applicant has not conducted its securities investment business and has not wound up such business in a manner that is prejudicial to its clients and creditors; and
- e. that the applicant intends (i) to continue as a legal entity in the Cayman Islands, or (ii) to apply to be struck-off (e.g. through voluntary liquidation and dissolution) from the register of companies maintained by the Companies Registry, or (iii) to merge with another Registered Person.

### **Specific Cases for Deregistration:**

In addition, the Regulations specifically address the following cases of deregistration, where additional requirements and documentation are or may be requested by CIMA.

1. The Registered Person is being wound up.
2. The Registered Person is being merged with another Registered Person.
3. The Registered Person seeks to cancel its registration with CIMA by reason of its transfer to another jurisdiction.
4. The Registered Person has never carried on business.

#### *Voluntary Liquidation*

The Registered Person applying to CIMA for deregistration in connection with a voluntary liquidation<sup>2</sup> is required to provide, in addition to the documentation referred to above, the following:

- (a) the notice of voluntary winding up (Form No. 19 of the Companies Winding Up Rules, 2018);
- (b) the voluntary liquidator's consent to act (Form No. 20 of the Companies Winding Up Rules, 2018); and
- (c) the declaration of solvency (Form No. 21 of the Companies Winding Up Rules, 2018).

#### *Merger*

The Registered Person applying to CIMA for deregistration in connection with a merger with another Registered Person is required to provide, in addition to the documentation referred to above, an application to CIMA for prior approval of the merger which shall be accompanied by resolutions of the merging and surviving parties, the plan of merger and appendices, and such other documents as CIMA may specify. Where CIMA approves the merger, the surviving Registered Person is required, upon the merger becoming effective, to provide a certified copy of the certificate of merger within seven (7) days of its issuance.

#### *Transfer to another Jurisdiction*

The Registered Person applying to CIMA for deregistration in connection with a transfer to another jurisdiction is required to provide, in addition to the documentation referred to above, an affidavit from a senior officer that attests to the following:

- (a) the reason for the transfer and name of the jurisdiction to which the Registered Person is being transferred;
- (b) that the Registered Person has operated in accordance with its Articles of Association; and
- (c) that the transfer is not prejudicial to the Registered Person's clients or creditors.

In such specific cases (voluntary liquidation, merger or transfer to another jurisdiction), the Registered Person will be assigned "registration under termination" status, until all the documents listed

above are submitted to and received by CIMA, and CIMA is satisfied that the Registered Person has complied with the Regulations.

*Registered Person that Never Carried on Business*

A Registered Person that has never carried on business means a Registered Person that has not commenced any client relationships contractually or otherwise for the purpose of carrying on securities investment business. In this case, the Registered person will be required, for purposes of deregistration, to provide to CIMA an affidavit by a senior officer that attests to the fact that the Registered Person has never carried on such business.

**This publication is not intended to be a substitute for specific legal advice or a legal opinion. For specific advice, please contact your usual Loeb Smith attorney or any of:**

E: [gary.smith@loebsmith.com](mailto:gary.smith@loebsmith.com)

E: [ramona.tudorancea@loebsmith.com](mailto:ramona.tudorancea@loebsmith.com)

E: [vivian.huang@loebsmith.com](mailto:vivian.huang@loebsmith.com)

E: [yun.sheng@loebsmith.com](mailto:yun.sheng@loebsmith.com)

E: [elizabeth.kenny@loebsmith.com](mailto:elizabeth.kenny@loebsmith.com)

E: [santiago.carvajal@loebsmith.com](mailto:santiago.carvajal@loebsmith.com)

---

<sup>1</sup> The Regulations clarify that “properly terminated or transferred” means, in relation to client relationships, that a Registered Person has paid money due to all clients and there are no residual cash or other assets owed or potentially owed to clients, or that client relationships have been fully transferred to another service provider.

<sup>2</sup> Additional provisions are included in cases of court-supervised liquidation.