

LEGAL UPDATE

Cayman Economic Substance and Its Impact on Fund Managers

The Securities and Investment Business (Amendment) Law 2019 (the "**SIB Amendment Law**") and the Directors Registration and Licensing (Amendment) Law, 2019 were both passed by the Cayman Islands Government on 18th June 2018.

In Brief

Cayman Islands entities currently excluded from the licensing requirements under the Securities Investment Business Law and benefitting from so-called "Excluded Person" status will be affected by the new SIB Amendment Law.

The amendments introduced by the SIB Amendment Law, principally introduce the application of the economic substance test under The Cayman Islands International Tax Co-operation (Economic Substance) Law, 2018 (the "**ES Test**") to Cayman domiciled entities carrying on Fund Management Business but which are not licensed in the Cayman Islands.

New Requirements for Cayman Fund Managers and the Phasing Out of Excluded Person Status

In accordance with the transitional provisions under the SIB Amendment Law, all Cayman Islands domiciled Fund Managers which are currently registered (but not licensed) with the Cayman Islands Monetary Authority ("**CIMA**") with "*Excluded Person*" status that wish to continue to carry on business in or from within the Cayman Islands will be required to apply to be re-registered as a "registered person" under the SIB Amendment Law ("**Registered Person**").

In order to become a Registered Person, the Fund Manager will have to meet the following requirements going forward:

- (i) **Registration with CIMA** – Each Cayman Fund Manager will be required to register with CIMA and will become a regulated entity subject to very similar requirements as a licensee. There will be a transition period during which CIMA will require certain information to be submitted to it in respect of existing Fund Managers which already have "*Excluded Person*" status in order to complete the transition from "*Excluded Person*" status to full registration with CIMA as a Registered Person.
- (ii) **Fit and Proper Persons** - The shareholders, directors and senior officers of each Cayman Fund Manager with "*Excluded Person*" status (and also for new Fund Managers which apply for registration with CIMA) seeking to become a Registered Person must be ***fit and proper persons***.

- (iii) **Economic Substance** – Each Cayman Fund Manager registered with CIMA as a Registered Person must maintain in the Cayman Islands such resources, including staff and premises, books and records as CIMA may consider appropriate, having regard to the nature and scale of its business.
- (iv) **Minimum Number of Directors** – Each Cayman Fund Manager seeking registration with CIMA as a Registered Person must have a minimum of two directors (or two managers if it is an LLC) registered with CIMA under the Directors Registration and Licensing Law, 2014.

It is estimated that a large majority of such entities will be affected and therefore will need to comply with the CIMA requirements during this transition period in order to continue carrying on securities investment business.

What happens during the Transition Period?

During the transition period, Fund Managers which are currently registered (but not licensed) with CIMA with “*Excluded Person*” status are required to:

- (i) provide such information as CIMA may request by 15th August, 2019; and
- (ii) take such steps to re-register with CIMA as a Registered Person by 15th January, 2020 if that Fund Manager wishes to continue carrying on securities investment business.

If the Fund Manager:

- (i) does not provide the required information to CIMA by 15th August, 2019; or
- (ii) does not complete the re-registration process 15th January, 2020,

it will cease conducting securities investment business in or from within the Cayman Islands and shall be deregistered by CIMA.

As Cayman attorneys, we understand the changing regulatory landscape and can provide in-depth guidance and Cayman economic substance solutions to pass the ES Test and to ensure that Cayman Fund Managers minimize their risk and comply with applicable Laws and Regulations during the transition period and beyond.

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