

CAYMAN ISLANDS



SECURITIES INVESTMENT BUSINESS (AMENDMENT) LAW, 2019

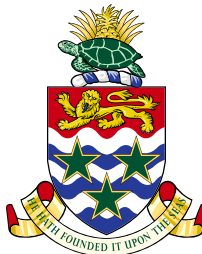
(Law 8 of 2019)

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CAYMAN ISLANDS

(Law 8 of 2019)

I Assent,



Martyn Roper
Governor

Date: 17th June, 2019

SECURITIES INVESTMENT BUSINESS (AMENDMENT) LAW, 2019

(Law 8 of 2019)

A LAW TO AMEND THE SECURITIES INVESTMENT BUSINESS LAW (2019 REVISION) TO ADJUST THE EXCLUDED PERSONS REGIME; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Law may be cited as the *Securities Investment Business (Amendment) Law, 2019*.

Amendment of section 2 - definitions

2. The *Securities Investment Business Law (2019 Revision)*, in this Law referred to as the “principal Law”, is amended in section 2 as follows —

- (a) by deleting the definition of the words “senior officer” and substituting the following definition —

“ **senior officer**” means a director, managing director, president, chief executive officer, partner, managing partner, general partner, ultimate partner, manager or someone who has a similar control function;” and

- (b) by inserting in the appropriate alphabetical sequence the following definitions —

“**depository**” means a depository appointed in accordance with paragraph 11 of the Schedule to the *Securities Investment Business (EU Connected Fund (Alternative Investment Fund Managers Directive)) Regulations, 2016* and carrying out the duties set out in paragraph 13 of that Schedule;

“**registered person**” means a person specified in Schedule 4 and who has registered with the Authority in accordance with section 5(4);

“**single family**”, in relation to a single family office, means —

- (a) an individual; or
- (b) a group of individuals who are connected in at least one of the ways set out in in Schedule 4A;

“**single family office**” means a legal entity or legal arrangement formed in the Islands by a single family to conduct securities investment business for or on behalf of that single family where —

- (a) the securities are not beneficially owned by a third party; and
- (b) the legal entity or legal arrangement does not hold itself out to the public as conducting securities investment business for any person except members of the single family;”.

Amendment of section 4 - meaning of securities investment business

3. The principal Law is amended in section 4 as follows —

- (a) in subsection (1)(a) as follows —
 - (i) in subparagraph (v) by deleting the word “or”; and
 - (ii) by inserting after subparagraph (v) the following subparagraphs —
 - “(vi) a limited liability company formed and registered under the *Limited Liability Companies Law (2018 Revision)*; or
 - (vii) a limited liability partnership formed and registered under the *Limited Liability Partnership Law, 2017;*”;
- (b) by repealing subsection (2) and substituting the following subsections —
 - “(2) The respective activities carried out by the non-registrable persons described in Schedule 2A and the activities set out in Schedule 3 do not constitute the carrying on of securities investment business for the purpose of this Law.



- (3) The persons described in Schedule 2A are persons who are not required to register under this Law.”.

Insertion of sections 4A - exercise of discretionary powers; 4B - direction to cease and desist; and 4C - prohibition to act as depositary

4. The principal Law is amended by inserting after section 4 the following sections —

“Exercise of discretionary powers

4A. The Authority may —

- (a) impose conditions on an applicant for registration or licensing at the time of application or at any time thereafter, as the Authority may consider appropriate having regard to the nature, risk and scale of the business;
- (b) refuse registration of an applicant for registration; and
- (c) employ the enforcement powers of the Authority against a registered person.

Direction to cease and desist

4B. (1) Where the Authority is of the opinion that a licensee or a registered person is —

- (a) committing, or about to commit, an act that is an unsafe or unsound practice in conducting the business of the licensee or a registered person; or
- (b) pursuing or about to pursue, a course of conduct that is an unsafe or unsound practice in conducting the business of the licensee or registered person,

the Authority may direct the licensee or registered person, in relation to the securities investment business of the licensee or registered person to cease or refrain from committing the act or pursuing the course of conduct and to perform such acts as, in the opinion of the Authority, are necessary to remedy or ameliorate the situation.

(2) A person who, without reasonable cause, fails to comply with a direction given by the Authority under subsection (1) commits an offence and is liable —

- (a) on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of one year or to both; and
- (b) on conviction on indictment to a fine of one hundred thousand dollars or to imprisonment for a term of five years or to both,

and if the offence of which the person is convicted is continued after conviction the person commits a further offence and is liable to a fine of ten thousand dollars for every day on which the offence is so continued.

Prohibition to act as depositary

4C. A registered person shall not act or function as a depositary in or from within the Islands.”.

Amendment of section 5 - requirement for a licence

5. The principal Law is amended in section 5 as follows —

- (a) in the section header, by inserting after the words “a licence” the words “, registration, deregistration and fees payable”;
- (b) in subsection (1), by inserting after the words “a licence” the words “or registration” in each instance;
- (c) by inserting after subsection (1) the following subsections —
 - “(1A) An individual shall not carry on securities investment business in or from within the Islands except where the individual is a person described in Schedule 2A.
 - (1B) A person who carries on securities investment business activities for which a licence or registration is required shall be —
 - (a) a company incorporated under the *Companies Law (2018 Revision)*;
 - (b) a general partnership established under the *Partnership Law (2013 Revision)*;
 - (c) a limited partnership registered under the *Partnership Law (2013 Revision)*;
 - (d) an exempted limited partnership registered under the *Exempted Limited Partnership Law (2018 Revision)*;
 - (e) a foreign company registered under Part IX of the *Companies Law (2018 Revision)*;
 - (f) a limited liability company formed and registered under the *Limited Liability Companies Law (2018 Revision)*; or
 - (g) a limited liability partnership formed and registered under the *Limited Liability Partnership Law, 2017.*”;
- (ca) in subsection (2), by deleting the words “Schedule 4” and substituting the words “Schedule 2A”; and
- (d) by repealing subsection (4) and substituting the following subsections —



- “(4) A person specified in Schedule 4 shall register with the Authority and such person, in order to be registered, shall file an application in the prescribed form and pay the prescribed registration fee to the Authority.
- (4A) An applicant for registration shall not be registered unless the applicant has satisfied the Authority that the applicant’s shareholders, directors and senior officers are fit and proper persons.
- (4B) Where a registered person ceases to carry on securities investment business the registered person shall within twenty-one days after the date of ceasing to carry on in the Islands any regulated activity listed in Schedule 2 —
- (a) notify the Authority of its intention to deregister; and
- (b) file the prescribed details to deregister in the manner specified by the Authority.
- (4C) A registered person shall notify the Authority within twenty-one days after any material change in the information filed by the registered person in its application or annual declaration.
- (4D) A registered person who fails to pay the prescribed annual fee shall pay a surcharge of one-twelfth of that fee for every month or part of a month after the 15th January in each year that the fee is not paid.
- (4E) A registered person shall —
- (a) file with the Authority, on or before the 15th day of January in each year, an annual declaration in such form as the Authority may approve; and
- (b) pay to the Authority the prescribed annual fee at the time of the filing of the declaration.
- (4F) The Authority may, for good cause, waive any additional fee imposed under subsection (4D).
- (4G) If the prescribed annual fee referred to in subsection (4E) is not paid on or before the 15th day of January in each year, the unpaid annual fee may be sued for by the Crown by action as a civil debt and the Crown may require, and the court may order, the payment of any penalties accrued in respect of the late payment of the fee.”;
- (e) in subsection (5) as follows —
- (i) by deleting the words “person to whom Schedule 4 applies” and substituting the words “registered person”; and
- (ii) by deleting the words “section 17(2)(v)” and substituting the words “section 17(2A)(e)”; and

- (f) in subsection (6) by inserting after the words “current licence” the words “or registration”.

Amendment of section 6 - application for a licence

6. The principal Law is amended in section 6(13) by deleting the words “or a person specified in Schedule 4” and substituting the words “, a person specified in Schedule 2A or a person specified in Schedule 4”.

Amendment of section 8 - shares not to be issued or transferred without the prior approval of the Authority

7. The principal Law is amended in section 8 as follows —
- (a) by inserting after subsection (1) the following subsection —

“(1A) Shares in a company or interests in a limited liability company or a partnership which is a registered person under this Law shall not be issued and issued shares or interests shall not be voluntarily transferred or disposed of without the Authority being notified within twenty-one days of the transfer or disposal.”;
 - (b) in subsection (3), by deleting the words “In subsection (1)” and inserting the words “In subsections (1) and (1A)”;
 - (c) in subsection (4) as follows —
 - (i) by inserting after the words “a partnership which is licensed” the words “or registered”; and
 - (ii) by inserting after the words “instructions as to the licence” the words “, registration”.

Amendment of section 9 - use of words connoting securities investment business

8. The principal Law is amended in section 9 as follows —
- (a) by inserting after the words “require a licensee” the words “or registered person”; and
 - (b) by inserting after the words “revoke its licence” the words “or cancel its registration”.

Amendment of section 10 - segregation of property

9. The principal Law is amended in section 10 by —
- (a) inserting after the words “A licensee” the words “or a registered person”; and
 - (b) inserting after the words “the licensee’s” the words “or registered person’s”.



Amendment of section 12 - guidance notes

10. The principal Law is amended in section 12(1) by deleting the words “Financial Secretary” and substituting the words “Minister with responsibility for financial services”.

Amendment of section 15 - number and approval of directors

11. The principal Law is amended in section 15 as follows —

- (a) in subsection (2), by deleting the words “that is a company”;
- (b) in subsection (3), by inserting after the words “A licensee” the words “or registered person”;
- (c) by inserting after subsection (3) the following subsections —

“(4) A registered person shall have, where the registered person is —

- (a) a company incorporated under the *Companies Law (2018 Revision)*, a minimum of –

- (i) two directors who are individuals; or
- (ii) one corporate director,

each of whom is complying with the *Directors Registration and Licensing Law, 2014*;

- (b) a general partnership established, or a limited partnership registered under the *Partnership Law (2013 Revision)*, a minimum of two partners;
- (c) an exempted limited partnership registered under the *Exempted Limited Partnership Law (2018 Revision)*, a minimum of two directors (or equivalent officers) appointed in respect of its general partner (or where the general partner is itself an exempted limited partnership registered under the *Exempted Limited Partnership Law (2018 Revision)* at the level of the ultimate general partner);
- (d) a foreign company registered under Part IX of the *Companies Law (2018 Revision)*, a minimum of two directors (or equivalent officers);
- (e) a limited liability company formed and registered under the *Limited Liability Companies Law (2018 Revision)*, a minimum of two managers complying with the *Directors Registration and Licensing Law, 2014*; or
- (f) a limited liability partnership formed and registered under the *Limited Liability Partnership Law, 2017*, a minimum of two managing partners.

- (5) Any alteration made in the senior officers of a registered person shall be notified to the Authority within twenty-one days of the alteration.”.

Amendment of section 16 - powers and duties of the Authority

12. The principal Law is amended in section 16 as follows —

- (a) in subsection (1)(c), by inserting after the word “licensee”, wherever this word appears, the words “or registered person”; and
- (b) by inserting after subsection (1) the following subsection —
- “(1A) The Authority may require —
- (a) from a registered person, information related to its securities investment business; or
- (b) from any person who, in the opinion of the Authority, is conducting securities investment business in contravention of this Law information related to the person’s securities investment business.”.

Amendment of section 17 - enforcement powers of the Authority

13. The principal Law is amended in section 17 as follows —

- (a) in subsection (1) as follows —
- (i) by inserting after the words “a licensee”, wherever they appear, the words “or a registered person”; and
- (ii) by inserting after the words “the licensee”, wherever they appear, the words “or the registered person”;
- (b) by repealing subsection (2) and substituting the following subsections —
- “(2) The Authority may carry out any of the actions specified in subsection (2A) if it knows or has reasonable grounds to believe that a licensee or a registered person —
- (a) is unable or appears likely to become unable to meet its obligations as they fall due;
- (b) is carrying on business fraudulently or otherwise in a manner detrimental to the public interest, to the interest of its clients or to the interest of its creditors;
- (c) has contravened any provision of this Law or the regulations or of the *Anti-Money Laundering Regulations (2018 Revision)*;
- (d) has failed to comply with a condition of its licence or registration;
- (e) has not conducted the direction and management of its business in a fit and proper manner or has directors, senior



officers, managers or persons who have acquired ownership or control who are not fit and proper persons; or

- (f) has failed to comply with any lawful direction from the Authority.

(2A) The actions referred to in subsection (2) are as follows —

- (a) revoke the licence or cancel the registration;
- (b) impose conditions or further conditions upon the licence or registration or amend or revoke any such conditions;
- (c) apply to the court for any order which is necessary to protect the interests of clients or creditors of the licensee or registered person such orders including an injunction or restitution or disgorgement order under section 18;
- (d) publish in the Gazette and in any official publications of the Authority a breach by any person of this Law, of any regulations made hereunder or of any lawful direction issued by the Authority;
- (e) at the expense of the licensee or registered person, require that an auditor's report be submitted to the Authority on the licensee's or registered person's anti-money laundering systems and procedures for compliance with the *Anti-Money Laundering Regulations (2018 Revision)*;
- (f) require the substitution of any director or officer of the licensee or registered person whenever appointed or the divestment of ownership or control;
- (g) at the expense of the licensee or registered person, appoint a person to advise the licensee or registered person on the proper conduct of its affairs and to report to the Authority thereon;
- (h) at the expense of the licensee or registered person appoint a person to assume control of the licensee's or registered person's affairs who shall have all the powers necessary to administer the affairs of the licensee or registered person including the power to terminate the securities investment business of the licensee or registered person;
- (i) in the case of a reasonable belief that the licensee or registered person has materially contravened the *Anti-Money Laundering Regulations (2018 Revision)*, report the same to the Director of Public Prosecutions; or
- (j) require such action to be taken by the licensee or registered person as the Authority reasonably believes necessary for the

- purposes of dealing with the circumstances referred to in subsection (2)(a) to (g).”;
- (c) in subsection (3) as follows —
 - (i) in the chapeau as follows —
 - (A) by deleting the words “subsection (2)(i) to (ix) and substituting the words “subsection (2A)””; and
 - (B) by inserting after the word “licensee” the words “or registered person”;
 - (ii) in paragraph (c) by inserting after the word “licensee” the words “or registered person”;
 - (iii) in paragraph (d) by inserting after the word “licensee’s” the words “or registered person’s”;
 - (d) in subsection (5) as follows —
 - (i) by deleting the words “subsection (2)(vii) or (viii)” and substituting the words “subsection (2A)(g) or (h)”;
 - (ii) by inserting after the word “licensee” the words “or registered person”;
 - (e) in subsection (6) as follows —
 - (i) in paragraph (a), by deleting the words “subsection (2)(vii) or (viii)” and substituting the words “subsection (2A)(g) or (h)”;
 - (ii) in paragraph (c) by inserting after the word “licensee” the words “or registered person”;
 - (iii) by repealing paragraph (d) and substituting the following paragraph —
 - “(d) revoke the licence or cancel the registration and apply to the court for an order that the licensee or registered person, if either is a company, be wound up by the court in which case the provisions of the *Companies Law (2018 Revision)* relating to the winding up of a company shall apply.”;
 - (f) in subsection (7) as follows —
 - (i) by inserting after the words “cancel a licence” the words “or registration”;
 - (ii) by inserting after the word “licensee” the words “or registered person”;
 - (iii) by inserting after the words “grant of the licence” the words “or registration”;
 - (g) in subsection (8) by inserting after the word “licence” the words “or registration”.



Amendment of section 18 - injunctions and restitution and disgorgement orders

14. The principal Law is amended in section 18(1) by inserting after the words “that a licensee”, wherever they appear, the words “or registered person”.

Amendment of section 19 - duty of auditor

15. The principal Law is amended in section 19 as follows —
- (a) in subsection (1) as follows —
 - (i) by inserting after the words “believe that the licensee” the words “or registered person”; and
 - (ii) by inserting after the words “the Authority and the licensee” the words “or registered person”;
 - (b) in subsection (2), by inserting after the words “a licensee” the words “or registered person”;
 - (c) in subsection (3), by inserting after the words “auditor of a licensee” the words “or a registered person”; and
 - (d) by deleting the words “section 17(2)(v)” wherever it appears and substituting the words “section 17(2A)(e)”.

Amendment of section 21 - winding up

16. The principal Law is amended in section 21 as follows —
- (a) in subsection (1), by deleting the words “winding up of the company voluntarily” and substituting the words “voluntary winding up proceedings that have commenced”; and
 - (b) by inserting after subsection (2) the following subsection —
 - “(3) The Authority may apply to the court for an order that a person specified in Schedule 4 that has been in contravention of section 5(4) be wound up by the court, notwithstanding any voluntary winding up proceedings that have commenced.”.

Amendment of section 22 - appeals against decisions made under section 17(2)(i) and (viii)

17. The principal Law is amended in section 22 as follows —
- (a) in the section header, by deleting the words “section 17(2)(i) and (viii)” and substituting the words “sections 17(2A)(a) and (h)”;
 - (b) in subsection (1) by deleting the words “section 17(2)(i) and (viii)” and substituting the words “sections 17(2A)(a) and (h)”;
 - (c) in subsection (4) by inserting after the word “licensee” the words “or registered person”.

Amendment of section 23 - appeals against other decisions of the Authority

18. The principal Law is amended by deleting the words “section 17(2)(i) and (viii)” and substituting the words “section 17(2A)(a), section 17(2A)(h)”.

Insertion of Schedule 2A - non-registrable persons

19. The principal Law is amended by inserting after Schedule 2 the following Schedule —

“Schedule 2A

(sections 4, 5 and 6)

Non-registrable persons

1. Persons described in paragraph 2 are persons for whom there is no requirement for registration under this Law and shall be referred to as “non-registrable persons”.
2. The persons referred to in paragraph 1 are as follows —
 - (a) A person participating in a joint enterprise (and where that person is a company any other company which is part of the same group of companies as that person) with the person carrying on the 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.
 - (b) The following persons —
 - (i) the Exchange;
 - (ii) the Authority; or
 - (iii) the Government of the Islands or any public authority created by the Government.
 - (c) A person carrying on securities investment business only in the course of acting in any of the following capacities —
 - (i) director;
 - (ii) partner;
 - (iii) manager of a limited liability company;
 - (iv) liquidator (including a provisional liquidator);
 - (v) trustee in bankruptcy;
 - (vi) receiver of an estate or company;
 - (vii) executor or administrator of an estate; or



(viii) 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 otherwise than as part of any remuneration such person receives for acting in that capacity and either —

(A) does not hold himself or herself out as carrying on securities investment business other than as a necessary or incidental part of performing functions in that capacity, or

(B) is acting on behalf of a company, partnership or trust that is otherwise licensed or exempted from licensing under this Law.

(d) The conduct of securities investment business by a single family office.”.

Amendment of Schedule 4 - excluded persons

20. The principal Law is amended in Schedule 4 by repealing the schedule and substituting the following schedules —

“SCHEDULE 4

(sections 2, 5, 6 and 21)

Persons required to be registered under section 5(4)

1. A company within a group of companies carrying on securities investment business exclusively for one or more companies within the same group.
2. A person carrying on securities investment business exclusively for one or more of the following classes of persons —
 - (a) a sophisticated person;
 - (b) a high net worth person; or
 - (c) 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 falling within (a) or (b),

and who has a registered office or a place of business in the Islands for which services are provided by a person licensed to provide such services.

3. A person to whom section 4(1) applies but who is regulated in respect of securities investment business by a recognised overseas regulatory authority in the country or territory (other than the Islands) in which the securities investment business is being conducted.

SCHEDULE 4A

(section 2)

Connected Persons within a Single Family

1. The following persons are connected persons in relation to an individual within a single family —
 - (a) spouse;
 - (b) the descendants of the individual and their spouses;
 - (c) parents, including step-parents;
 - (d) grandparents;
 - (e) parents-in-law, including step-parents-in-law;
 - (f) brother, step-brother, sister, step-sister and their spouses;
 - (g) spouse's grandparents;
 - (h) spouse's brother, step-brother, sister, step-sister and their spouses and children;
 - (i) parent's brother, step-brother, sister, step-sister and their spouses;
 - (j) children of the brother, step-brother, sister or step-sister of the individual's parents, both present and future, including stepchildren, and their spouses; and
 - (k) children of the individual's brother, step-brother, sister or stepsister, both present and future, including step-children, and their spouses.
2. For any of the relationships listed in paragraph 1 that may be established by blood, that same relationship may also be established by adoption.
3. In paragraph 1(b), the term "descendants of the individual" means the individual's children, the children of that individual's children, the children of those children, and so on.
4. For the purpose of paragraph 3, the term "children" includes step-children."



Transitional

- 21.** (1) Any person who is registered with the Authority pursuant to paragraphs 1, 4 and 5 of Schedule 4 on the day immediately before the commencement of this Law shall —
- (a) provide such information as the Authority may request by 15th August, 2019; and
 - (b) take such steps to re-register with the Authority as a registered person by 15th January, 2020 if that person wishes to continue carrying on securities investment business.
- (2) A person described under subsection (1) who —
- (a) does not provide the required information to the Authority by 15th August, 2019; or
 - (b) does not complete the re-registration process under this section by 15th January, 2020,
- shall cease conducting securities investment business in or from within the Islands and shall be deregistered by the Authority.”.

Passed by the Legislative Assembly the 5th day of June, 2019.

Hon. W. McKeeva Bush
Speaker

Zena Merren-Chin
Clerk of the Legislative Assembly