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**Licence and Registration, please! – The new licensing and registration regime for Directors of Cayman companies.**

## IN THIS ISSUE

### Cayman introduces new regime for registration and licensing of Directors

On 4<sup>th</sup> June 2014, the Directors Registration and Licensing Law, 2014 (the "**Law**") came into force in the Cayman Islands. The Law requires all directors (wherever they reside in the world) of "*Covered Entities*" to register with the Cayman Islands Monetary Authority ("**CIMA**"). The Law has also introduced a licensing regime for "Professional Directors" and "Corporate Directors".

#### Director registration regime

##### **1. What are "Covered Entities"?**

Only Directors of Covered Entities are impacted by the Law. "Covered Entities" are: (i) mutual funds regulated by CIMA and (ii) companies which maintain a registration as an Excluded Person under the Securities Investment Business Law (e.g. investment managers and investment advisors which are incorporated as Cayman companies and provide investment management, investment advisory services, or other securities investment business exclusively for sophisticated persons, high net worth persons, etc).

##### **2. Which Directors will not be affected by the Law?**

The Law applies only to Directors of Cayman mutual funds which are registered with, and regulated by, CIMA. Accordingly, a Director of a mutual fund which is exempted from registration with CIMA under section 4(4) of the Mutual Funds Law (2013 Revision) or any other Cayman domiciled investment fund which is not registered with, and regulated by, CIMA will not be affected by the Law. The Directors of Cayman Islands exempted companies which are not "Covered Entities" are not impacted by the Law.

##### **3. Time period during which Directors need to register**

Each Director of existing Covered Entities must register with CIMA by 4<sup>th</sup> September 2014 (i.e. within

3 months of the Law coming into force) in order to avoid contravening the Law.

Where an individual is to be appointed as a Director a Covered Entity for the first time after June 4<sup>th</sup> 2014 (the date on which the Law came into force) that individual will need to be registered with CIMA before being appointed as a Director. The 3 months grace period to register with CIMA will not apply to new appointments taking effect after June 4<sup>th</sup> 2014.

#### **4. Penalty for failing to register**

A Director who fails to register before the 3 months' deadline, will be in contravention of the Law and runs the risk of committing an offence and being liable on conviction to a maximum fine of approximately US\$60,976.00, to imprisonment for 12 months, or to both.

#### **5. How does a Director complete registration with CIMA?**

Each individual who is a director of less than twenty (20) Covered Entities, will have to submit to CIMA the individual's name, date of birth, nationality, home address, email and telephone contact details, and the names and registration numbers of the Covered Entities for which the individual acts as a director. The individual will also have to provide some basic confirmations (e.g. confirmation as to whether the individual has ever been convicted of a criminal offence involving fraud or dishonesty, and confirmation as to whether the applicant has ever been the subject of an adverse finding, financial penalty, sanction or disciplinary action by a regulator, self-regulatory organization or professional regulatory body).

The registration and the submission of the Director's information will take place via CIMA's dedicated web-portal. The payment of the applicable registration fee will be processed by credit card and will also take place via the web-portal. The application fee to register is approximately US\$171.00 and the registration fee for the first calendar year will be US\$683.00. Thereafter the annual registration fee will be approximately US\$854.00.

#### **6. Are there any on-going requirements?**

The Law requires each registered Director to provide to CIMA, on or before the January 15<sup>th</sup> in each calendar year, the information the Director had provided on registration (including any updated

Information) and pay to CIMA the prescribed annual fee. If the registered Director fails to pay the prescribed annual fee by January 15th, there will be 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.

If there is any change in the registration information provided to CIMA, the Director is required to inform CIMA of the change within 21 days. Any change to information provided, including minor changes, will be regarded by CIMA as being material and need to be notified to CIMA. This includes any additional appointments or terminations from the list of Covered Entities in respect of which the individual is a Director. Under the Law, failure to inform CIMA of changes is an offence and on summary conviction carries a maximum fine of approximately US\$24,390.00.

#### **7. When might CIMA refuse to register a Director?**

The approval of an application for registration is not automatic. An application may be refused by CIMA if CIMA is aware that the applicant (a) has been convicted of a criminal offence involving fraud or dishonesty; or (b) is the subject of an adverse finding, financial penalty, sanction or disciplinary action by a regulator, self-regulatory organization or a professional disciplinary body.

Where registration has been refused by CIMA, the person may re-apply for registration if there is a material change in the circumstances relevant to the application.

#### **Director licensing regime**

#### **8. Which Directors will require a license from CIMA?**

The Law requires a "Professional Director" (that is, a natural person who holds twenty (20) or more of directorships of Covered Entities) to be licensed by CIMA. "Corporate Directors" (that is, a body corporate appointed as a director for a covered entity) of Covered Entities, irrespective of the directorship numbers held, will also need to be licensed by CIMA. There are two exemptions to the professional director licensing regime. Where one of the exemptions applies, the Professional Director will instead be required to comply with the registration regime outlined above (however CIMA will require certain additional information to be provided as part of the application to register).

CIMA may grant a licence with or without conditions. In granting a licence to a Professional Director, CIMA must be satisfied that:

- (a) that the applicant has sufficient capacity to carry out the applicant's duties as a professional director; and
- (b) that the applicant is a fit and proper person for licensing as a professional director.

In determining whether an individual is a "*fit and proper person*", CIMA will have regard to all circumstances, including that person's:

- (a) honesty, integrity and reputation;
- (b) competence and capability; and
- (c) financial soundness.

Professional Directors will also be required to be covered by a minimum level of insurance.

## **9. Exemption from the requirement on "Professional Directors" to obtain a license**

The Law sets out two exemptions for Professional Directors who would otherwise be required to be licensed. The first exemption is where the person serving as the professional Director is a director, employee, member, officer, partner or shareholder of a holder of a companies management licence or a mutual fund administrators licence issued by CIMA.

The second exemption is particularly relevant to Fund Managers. This exemption applies where:

- (a) the person serving as the director of the Covered Entity is a natural person;
- (b) the person serving as the director of the Covered Entity is also a director, an employee, a member, an officer, a partner or a shareholder of a "fund manager" (i.e. a person providing investment management services or investment advisory services or a promoter under the Mutual Funds Law) of a mutual fund regulated under the Mutual Funds Law;

(c) the fund manager is registered or licensed by an overseas regulatory authority listed in the Schedule to the Law (e.g. SEC, CFTC, FINRA in the United States or the FCA in the United Kingdom);

(d) acts as a director for a Covered Entity by virtue of that person's relationship to the fund manager; and

(e) is registered with CIMA under the Law.

Accordingly, individuals who have twenty (20) or more directorships of Covered Entities but who hold such directorships through being a director, an employee, a member, an officer, a partner or a shareholder of a US fund manager that is SEC registered, for example, will not be required to obtain a licence. However that individual will be required to register with CIMA.

#### **10. Timetable for applying for licence and penalties**

Individuals who have twenty (20) or more directorships of Covered Entities will be required to apply to be licensed as a Professional Director within three (3) months of the Law coming into force.

If a Professional Director fails to comply with the applicable licensing requirements under the Law he or she commits an offence and on summary conviction carries a maximum fine of approximately US\$121,951.00 and/or up to 12 months' imprisonment.

For further information, please speak with your usual Loeb Smith & Brady contact, or:

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