



CAYMAN ISLANDS  
**MONETARY AUTHORITY**

**May, 2018**

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**Regulatory Policy**  
**Licensing Securities Investment Business**

**May 2018**

## 1. Statement of Objectives

- 1.1. In order to ensure that the Cayman Islands (the "Islands") retains its reputation as a leading and well-regulated international financial centre, it is imperative that all entities required to be licensed under the regulatory laws are licensed in accordance with a firm and clearly defined licensing criteria. The Cayman Islands Monetary Authority (the "Authority") recognises that high standards of licensing are the necessary foundation for effective regulation and supervision. Therefore, there is a need for rigorous criteria to be applied when processing all applications for licences.
- 1.2. This policy is consistent with the Authority's statutory objectives as prescribed in the Monetary Authority Law (as Revised), including:
  - a. promoting and maintaining a sound financial system in the Islands;
  - b. promoting and enhancing market confidence, consumer protection and the reputation of the Islands as a financial centre;
  - c. using its resources in the most efficient and economical way;
  - d. acting in the best economic interests of the Islands;
  - e. facilitating innovation in financial services business; and
  - f. recognising the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, from the point of view of both consumers and suppliers of financial services, while conforming to internationally applied standards insofar as they are relevant and appropriate to the circumstances of the Islands.

## 2. Scope

- 2.1. The Authority will apply this policy, and the requirements of the Securities Investment Business Law (2015 Revision) (the "SIBL") as well as the Securities Investment Business (Licence Applications and Fees) Regulations 2003 (the "Regulations") in assessing all applicants seeking to carry on securities investment business in or from within the Islands.
- 2.2. This policy will apply to entities engaged in regulated activities defined in Schedule 2 of the SIBL.
- 2.3. This policy does not apply to entities listed in Schedule 4 of the SIBL.
- 2.4. This policy does not apply to branches of banks which do not conduct securities business within the Cayman Islands but, whose parent company or affiliate companies engage in securities business.
- 2.5. This policy does not apply to natural persons, only to persons listed in Section 4 of the SIBL.
- 2.6. This policy should be read in conjunction with the following:
  - a. Securities Investment Business Law (2015 Revision);
  - b. Securities Investment Business (Conduct of Business ) Regulations 2003;
  - c. Securities Investment Business (Financial Requirements and Standards) Regulations, 2003;
  - d. Securities Investment Business (Licence Applications and Fees) Regulations 2003;
  - e. Anti-Money Laundering Regulations (as Revised),
  - f. Guidance Notes on The Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands (the "AML Guidance Notes");

- g. Statement of Guidance on Outsourcing;
- h. Statement of Guidance on Corporate Governance;
- i. Regulatory Policy and Procedure on Fitness and Propriety; and
- j. Any other relevant law, rule, policy or statement of guidance.

### **3. Licence Application**

- 3.1. Prospective applicants are strongly encouraged to contact the Authority to schedule a meeting to discuss the prospective application and the Authority's requirements prior to submitting an application. The applicant is also encouraged to provide the Authority with a formal legal opinion to support the application on how it meets the requirement for a licence.
- 3.2. Prospective applicants seeking to conduct securities investment business in or from within the Islands must make an application in writing to the Authority for the grant of a licence pursuant to section 6 of the SIBL.
- 3.3. Prospective applicants must not be a natural person.
- 3.4. The application must be accompanied by such documents and information as set out in the first schedule of the Securities Investment Business (Licence Applications and Fees) Regulations, 2003 and any other document required by the Authority, along with the prescribed fee.
- 3.5. The typical timeframe for processing an application is six (6) to eight (8) weeks for both Full and Restricted Licences, or as outlined in the Regulatory Handbook. The processing timeframe commences when ALL required documents and information have been received.
- 3.6. The Authority may reject an application if it believes that granting a licence would not be in the best interest of the public or the interests of the proposed customers or creditors or it not in line with the Authority's risk appetite.
- 3.7. The Authority may reject or return an application if it is considered by the Authority to be incomplete.
- 3.8. As a condition of licensing, the Authority may seek reimbursement for reasonable out-of-pocket expenses and related matters with respect to any on-site inspections outside the Islands.
- 3.9. All applicants should familiarise themselves with the relevant Rules, Statements of Guidance, Regulatory Policies and Procedures of the Authority and refer to the Authority's Website Securities Supervision Division - Index of Measures for a current list.

### **4. Licensing Requirement**

- 4.1. A licence is required in instances where:
  - 1. A person carrying on securities investment business is:
    - a. a company incorporated under the Companies Law (2013 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, 2014;
    - e. a foreign company registered under Part IX of the Companies Law (2013

Revision); or

2. A person carrying on securities investment business:
  - a. Has a place of business in the Cayman Islands through which its business activities are carried out.
    1. These activities include but are not limited to cold calling, sales presentations and seminars and any sort of promotion of securities products and services within the Cayman Islands.
- 4.2. The licence applied for and/or issued may permit one or more of the activities set out in Schedule 2 of the SIBL. The fee payable will be calculated accordingly.

## **5. Application of Assessment Criteria**

- 5.1. The Authority assesses applications with respect to fitness and propriety, ownership and control, financial resources, track record and business plan, internal systems, controls and risk management including anti-money laundering and countering the financing of terrorism ("AML/CFT"), know your customer, and record keeping.
- 5.2. The Authority will consider each application on its own merits and will apply a risk based approach to its assessment taking into account all relevant factors listed below.

### **5.3. Fit and Proper Criteria and Management**

- 5.3.1 The Authority will apply the Regulatory Policy and Regulatory Procedure on Fitness and Propriety when determining whether persons are fit and proper.
- 5.3.2 Applicants must demonstrate that they are controlled and managed by a sufficient number of shareholders, directors and senior managers who are fit and proper and pose no undue risk to the applicant, its shareholders, creditors and the reputation of the Islands.
- 5.3.3 An applicant must demonstrate that its directors and senior management have the necessary skills, qualifications and experience in relevant financial operations commensurate with the intended activities of the entity.
- 5.3.4 An applicant must confirm any record of criminal activities, adverse regulatory judgments or any past actions or conduct, and the related circumstances that may make a director or senior manager unfit to hold such positions within the applicant. A decision regarding suitability should be based on the criteria outlined in the Regulatory Policy – Fitness and Propriety.
- 5.3.5 An applicant must demonstrate that its directors will be able to apply independent judgement to the governance of the securities business in an informed way, free from any conflicts of interest.
- 5.3.6 An applicant must demonstrate that its directors have collective sound knowledge of the material activities that the securities investment business intends to pursue, and the associated risks.
- 5.3.7 Applicants must provide a Personal Questionnaire together with the documentation outlined in the Regulatory Procedures on Assessing Fitness and Propriety, on shareholders holding 10% or more of the shares or voting power of the securities investment business and or the securities investment business's

holding or parent company, if applicable. If there are no shareholdings or voting power exceeding 10%, applicants must provide the shareholding or voting power of each of the ten (10) largest shareholders, identifying family or related shareholders, where possible.

5.3.8 The business of all securities investment businesses should be conducted by at least two (2) individuals, who have sound experience. A minimum of two (2) directors are required for applicants that are companies. The Authority will generally require each director to have a minimum of five (5) years of relevant experience at a senior level. Any changes in directors and senior officers must be approved by the Authority.

5.3.9 Applicants must demonstrate that it will employ a sufficient number of staff with a sufficient range of skills and experience to manage the applicant's affairs in a sound and prudent manner evidenced by the attainment of relevant qualifications or by having sufficient relevant experience (and ongoing training) for the functions they are charged with performing.

5.3.10 Applicants should be guided by the Authority's Statement of Guidance on Corporate Governance with respect to the management of their affairs.

#### **5.4. Ownership and Control**

5.4.1. The Authority will apply the Regulatory Policy on Criteria for Approving Changes in Ownership and Control when assessing shareholding and control changes.

5.4.2. The legal, managerial and ownership structures of the applicant and its wider group must be transparent and must not hinder effective cross-border and consolidated supervision or the effective implementation of corrective measures in the future.

5.4.3. The Authority must be able to identify all intermediate and ultimate beneficial owners and, if the structure is overly complex or lacks transparency, the applicant must adequately explain and justify the rationale for having such a structure. The Authority will assess the information provided and make a determination. Generally, the Authority will not consider applicants that from the outset:

- a. have complex structures that prevent a clear view of their business or the group's business, as applicable;
- b. do not allow the Authority to clearly determine the ultimate beneficial owner;
- c. have significant parts of the group's operations being conducted in jurisdictions not on the List of Countries and Territories deemed to have equivalent legislation, pursuant to regulations 22(d)(ii) & (iii) and 23(1) of the AML Guidance Notes; and
- d. do not have a clearly identified natural home base of operations for the applicant.

5.4.4. Where the Authority believes that an applicant has an overly complex or a parallel-owned structure, the Authority may require a change in the group structure as a condition to its licence.

5.4.5. Applicants must provide a corporate chart showing all entities under common ownership or management, including non-financial entities.

- 5.4.6. Applicants may be required to provide further information on any member of their corporate group, including a non-financial entity.
- 5.4.7. An applicant must ensure that its shareholders fulfil all the requirements prescribed within the Schedule to the Regulations.
- 5.4.8. Where an applicant is to be held by a trust, the trustee must be regulated in a country satisfactory to the Authority. Applicants must provide the trust deed to the Authority and must disclose:
- a. the trustee(s);
  - b. the settlor, the protector and the beneficiaries of the trust; and
  - c. any person (in relation to the applicant, its administration or ownership) that may influence or have the power to make decisions with respect to the trust.
- 5.4.9. The Authority may require applicants to provide additional information on the legal arrangement of a trust to assess the risks, transparency, know your customer function and the fitness and propriety of the beneficiaries (where appropriate).
- 5.4.10. Applicants must demonstrate that adequate controls will be in place with respect to group shareholders and related entities to avoid undue risks in regard to related party transactions and credit risks.
- 5.4.11. Applicants must demonstrate that proper controls will be place to prevent the shareholder or persons in senior positions from overriding policies and procedures in a manner that would be prejudicial to investors, creditors or the public interest.
- 5.4.12. The applicant must provide a written commitment that there will be an independent audit function.
- 5.4.13. The applicant must demonstrate that the risk management function will be sufficiently independent of the business units whose activities and exposures it reviews.
- 5.4.14. The applicant must demonstrate that all significant management decisions will be made by more than one person ("four eyes" principle) (generally, any such decision that could impact the applicant's ability to meet its base requirement, liquidity, legal and regulatory requirements as well as impact investors and creditors negatively). The "four eyes" criterion is to be met on a continual basis and those persons must demonstrate a balance of appropriate qualifications, skills and experience and form or be a part of the overall management team.
- 5.4.15. The Authority must be satisfied that where "dual hatting" occurs (i.e. where resource constraints may make overlapping responsibilities necessary), these roles may be compatible --for example, the Chief Risk Officer may also have lead responsibility for a particular risk area-- and should not weaken checks and balances within the entity.
- 5.4.16. Where applicable, the Authority may perform checks with regulators in other jurisdictions on the good standing of the applicant, related entities and their shareholders, directors, subsidiaries, affiliates or principals.

## 5.5. **Financial Resources**

- 5.5.1. The Authority will assess the applicant's sources of initial capital, sources of funds, sources of wealth and financial resources in accordance with the activities to be conducted, the requirements of the SIBL, relevant regulations, rules, policies and statements of guidance. To assist with the Authority's assessment, acceptable documents to be provided, would include but not limited to net worth statements for individuals, audited financial statements for companies or unaudited management accounts to be signed off by a certified or accredited company or individual that is affiliated with a professional accounting body or institute in a jurisdiction that is deemed to have equivalent legislation, pursuant to regulations 22(d)(ii) & (iii) and 23(1) of the AML Guidance Notes.
- 5.5.2. The Authority must be satisfied that the applicant will have, and will continue to have, financial resources (whether actual or contingent) that are adequate for the nature and scale of the business and for its risk profile.
- 5.5.3. The Authority will assess the financial strength of the applicant's owner(s) to ensure that the applicant's owner(s) have sufficient financial strength to support the applicant on an ongoing basis.
- 5.5.4. The Authority may increase its minimum base requirement for the applicant depending on the applicant's risk profile and the complexity of its business.

## 5.6. **Track Record and Business Plan**

- 5.6.1. The Authority will require a detailed business plan covering at minimum the first three (3) years of projected business activity and which should be reflective of a sound feasible plan. The information should identify assumptions and qualifications accordingly. The business plan should contain details of the reasons for the business to establish an operation in the Islands, the short and long-term objectives and how these will be achieved.
- 5.6.2. As part of meeting the requirements prescribed within the Schedule to the Securities Investment Business (Licence Applications and Fees) Regulations, 2003, the applicant must be able to demonstrate in its business plan, that it has adequate resources, in terms of manpower, systems and expertise, to meet its objectives and should contain details, including, but not limited to:
  - a. the reasons for wanting to establish an operation in or from within the Islands
  - b. background information: company/group history, management team, number of expected employees, corporate structure, location of the securities investment business, names and percentage of all shareholder(s) including that of the parent;
  - c. financial plan: a discussion of the decision making criteria used to approve the plan internally; summary description of the business to be conducted, including short and long term objectives and how these will be achieved;
  - d. three (3) year pro forma financial statements for the business, including balance sheet, income statement, details regarding key assumptions and an identification of major assets, liabilities, income and expenses categories;
  - e. explanation of strategy for risk management and internal controls within the business;

- f. marketing strategy including target client jurisdiction and market;
- g. investment policy;
- h. details of its remuneration plan;
- i. details and statement of adequacy of domestic operational resources, in particular staff qualifications and experience and information systems including disaster recovery and business continuity arrangements;
- j. information about outsourcing arrangements such as but not limited to AML/CFT, securities investment business operations with all relevant internal and external parties;
- k. corporate governance policy and internal controls to be implemented, including reporting arrangements, where applicable;
- l. details of AML/CFT compliance systems and procedures; and
- m. an attestation outlining the jurisdictions in which the applicant will operate and confirmation that entity will comply with all relevant laws, rules, rules and regulations.

5.6.3. The Authority must be satisfied with the applicant's proposed strategic and operating plans and must be assured that its system of corporate governance, risk management and internal controls are appropriate to the expected size, risk profile and complexity of the business.

#### **5.7. Internal Systems, Controls and Risk Management**

- 5.7.1. The applicant must demonstrate that it will have in place a comprehensive risk management process and internal controls.
- 5.7.2. The Authority must be satisfied that the applicant's proposed policies, procedures, manuals, systems, and internal controls, relating to all areas of the applicant's risk areas are appropriate for the size, nature, and complexity of its operations and comply with best practices and all applicable laws and requirements and all relevant regulations, rules, policies and statements of guidance.
- 5.7.3. Applicants should refer to the rules and statements of guidance issued by the Authority on internal controls and various risk management topics that focus on and uphold key prudential standards and relevant risk management practices.
- 5.7.4. Applicants must obtain and maintain the necessary level of business indemnity insurance in relation to its business undertakings that pose the risk of losses arising from claims in respect of civil liabilities. The Authority's Statement of Guidance on Professional Indemnity Insurance outlines the minimum requirements and expectations.
- 5.7.5. Applicants must provide an overview of its information technology governance structure and overview of technology systems and platforms to be used, including type of hardware, type of application software and risk assessment of information technology operations.
- 5.7.6. Applicants must demonstrate that it will have a conflicts of interest policy as well as counter insider trading policy and procedures.
- 5.7.7. Applicants' Money Laundering Reporting Officer and Anti-Money Laundering Compliance Officer should have specific AML/KYC knowledge and experience as it relates to the Cayman Islands regulatory framework.

## 5.8. **Business Continuity**

- 5.8.1. Applicants should demonstrate that a comprehensive business continuity management framework has been developed and implemented that addresses critical areas including technical and human considerations necessary for its ongoing operations. Applicants should refer to the Authority's Statement of Guidance on Business Continuity Management for additional guidance.
- 5.8.2. For those applicants with two (2) or less shareholders, details of their succession plan should aim to minimise disruption to the securities investment business's business operations and any negative impact on the securities investment business's clients. This plan should include, at a minimum, specifics with respect to the:
  - i. death of the shareholder(s);
  - ii. critical illness or incapacity of the shareholder(s); and
  - iii. loss of necessary skill and expertise.

## 5.9. **Outsourcing**

- 5.9.1. An applicant should satisfy itself and demonstrate to the Authority that the service providers to which its business functions are outsourced are sufficiently experienced and qualified to carry out the functions.
- 5.9.2. Ideally, the service providers to which the applicant proposes to outsource any regulated activity or business function should be regulated (where applicable) and located in a jurisdiction that is deemed to have equivalent legislation, pursuant to regulations 22(d)(ii) & (iii) and 23(1) of the AML Guidance Notes.
- 5.9.3. An applicant should properly assess their service providers to identify conflicts of interest and should demonstrate to the Authority how conflicts identified will be adequately managed or eliminated.
- 5.9.4. An applicant's internal controls should demonstrate that proper oversight of any proposed outsourced functions will be in place. Applicants should refer to the Authority's Statement of Guidance on Outsourcing Regulated entities for further details.

## 5.10. **Know Your Customer Policy**

- 5.10.1. The applicant must demonstrate how it will comply with the requirements of the Proceeds of Crime Law as amended, the Anti-Money Laundering Regulations as amended, and demonstrate adequate policies, procedures, and systems consistent with the AML Guidance Notes.

## 5.11. **Record Keeping**

- 5.11.1. The Authority must be satisfied as to how and where management information is stored and accessed. Such records should be maintained in a manner that promotes retention and appropriate security and should be adequate to satisfy the requirements of the Authority and the relevant regulations and laws. Applicants must also show that the Authority will have reasonable access to records at all reasonable times.

5.11.2. Applicants should refer to the Authority's Statement of Guidance on the Nature, Accessibility and Retention of Records and any additional guidance issued by the Authority on this point.

**5.12. Financial Statements**

5.12.1. All securities investment businesses are required to have their accounts annually signed off by an auditor that is a member of a professional body or institute approved by the Authority, and file its audited accounts with the Authority within six (6) months of the end of the financial year, pursuant to Section 13 of the SIBL. Applicants must supply an Auditor's Letter of Consent as confirmation of the engagement of an auditor to perform this function.

**5.13. Market Conduct**

5.13.1. The applicant should disclose any jurisdiction in which it intends to conduct securities investment business and demonstrate to the Authority its commitment to comply with all applicable laws, rules and regulations of any government, regulatory authority/body or licensing agency governing their business activities in that jurisdiction.

**5.14. Legal Structure**

5.14.1. The legal structure of the licensee must enable the Authority's ongoing supervision, which could include the requirement to maintain and have available certain books and records within the Islands, as well as perform certain functions within the Islands, without being in violation of the Companies Law. The Companies Law restricts the activities that can be undertaken by an Exempted Company within the Cayman Islands and the use of this legal structure by a licensee, although not prohibited by law, may hinder the Authority from effectively supervising the licensee. As a result, the Authority may require that an applicant be an ordinary company under the Companies Law.

**5.15. Physical Presence**

5.15.1. An applicant is expected to have a physical presence in the Cayman Islands through which its business operations take place. The Authority may allow licensees to outsource certain material functions outside of the Islands in furtherance of its securities investment business. To effectively carry out its supervisory processes, the Authority reserves the right to require some or all activities/functions to be conducted within the Islands.