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INDUSTRY UPDATE – SINGLE FAMILY OFFICES

Following our various consultations on the Anti-Money Laundering (Single Family Office) Regulations (“**SFO Regulations**”), the Ministry of Financial Services is updating you on legislating for single family offices conducting securities investment business (“**SFOs**”).

BACKGROUND

As you are aware, in June 2019, the Securities Investment Business Law (“**SIBL**”) was amended to deal with entities that were allowed to be excluded from the SIBL licensing requirements (i.e. excluded persons). Subsequent to the amendments being made, excluded persons have thereafter been known as registered persons and are captured under Schedule 4 of SIBL. Registered Persons are therefore required to be registered with the Cayman Islands Monetary Authority (“**CIMA**”) and are subject to prudential regulatory oversight.

SFOs, however, fall within Schedule 2A of SIBL as a “non-registerable person”, meaning they are carved out of prudential oversight by CIMA. The SFO Regulations were drafted under the Proceeds of Crime Law in order to assign CIMA as the AML supervisor and also to ensure data regarding the numbers of SFOs operating in or from within the Islands is captured.

CONSULTATION

The Ministry invited comments from industry members on three separate iterations of the SFO Regulations, for four weeks in total – from 09 to 23 August 2019, from 28 October to 04 November 2019 and from 29 January to 05 February 2020.

You will have seen that each version of the Regulations was quite different from the previous versions due to the industry comments that were received, but also as a result of discussions with CIMA and consideration of the Financial Action Task Force (“**FATF**”) recommendations with regards to securities investment business.

In March 2020 the Ministry discussed, with industry members who requested meetings, the possibility of exempting SFOs with registered offices that are licenced under the Companies Management Law or the Banks and Trust Companies Law from the SFO Regulations. Although this amendment was well received by industry members, when further discussions were held with CIMA, issues were highlighted as to how an SFO, conducting securities investment business as defined in the SIBL, could be sufficiently supervised through their registered office.

Through our discussions with CIMA and further consideration of the supervisory requirements outlined by FATF, we conclude that it is necessary to include a test that CIMA can undertake to assess fitness and propriety of the SFO and of its members. It is also necessary for CIMA to have the power of inspection in order to achieve effective supervision. As the Ministry considered additional drafting instructions in order to achieve this, we recognised the SFO Regulations were duplicating provisions within SIBL.

OUTCOME

In order to meet the requirements of regulations and to avoid duplication of the legislation, the Ministry has therefore come to the view that the current exemption within schedule 2A SIBL for SFOs should be removed, and that these entities will be required to be regulated under SIBL if they are conducting securities investment business as per the definition at section 4 of SIBL.

The Ministry again thanks industry members for your engagement throughout the development of a legislative solution for SFOs.