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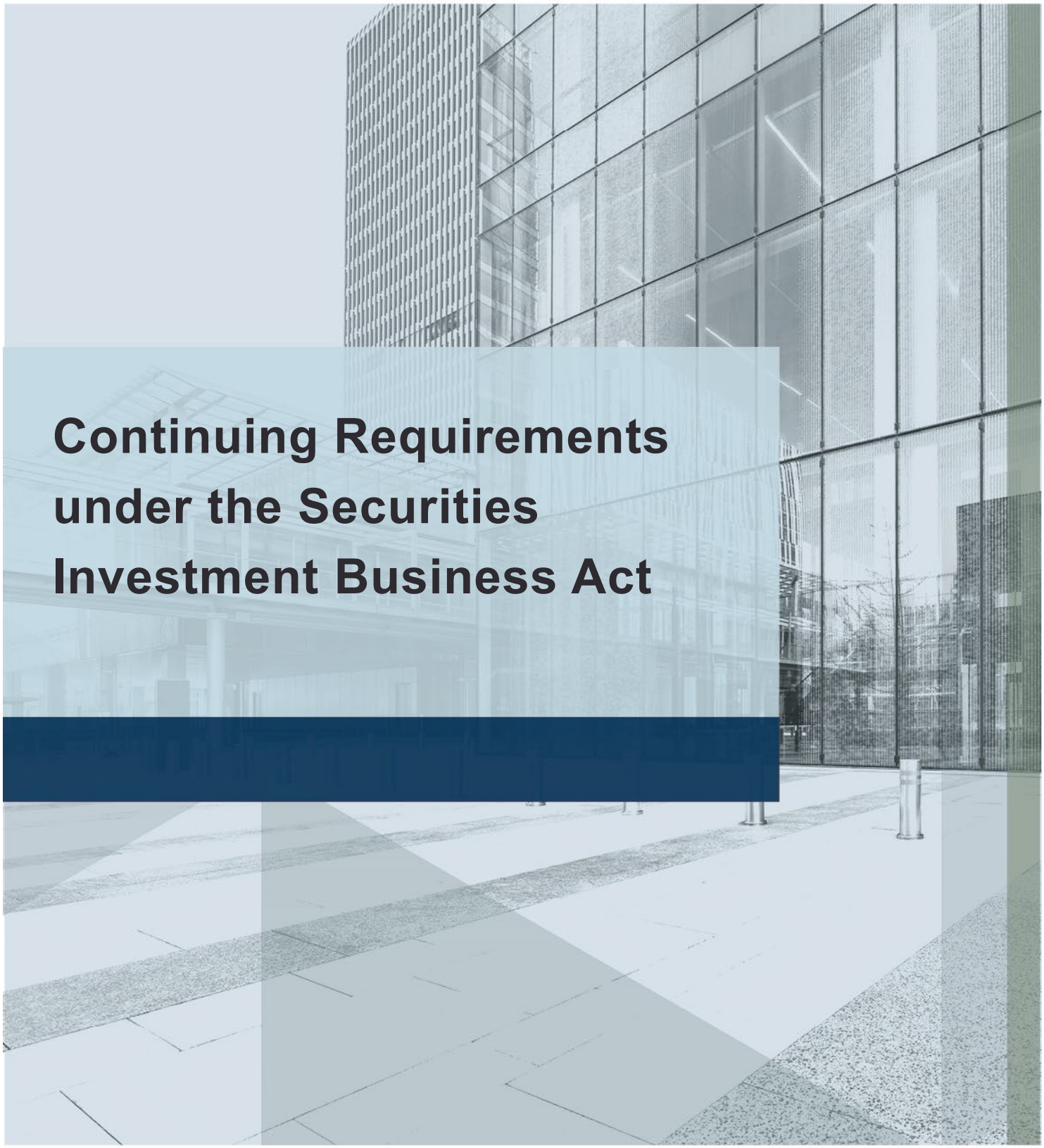

Continuing Requirements under the Securities Investment Business Act

Preface

This publication has been prepared for the assistance of entities registered or to be registered under the Securities Investment Business Act (2020 Revision) ("**SIBA**") in the Cayman Islands ("**Cayman**"). It deals in broad terms with the requirements of Cayman law and is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients and prospective clients seek legal advice in Cayman on their specific proposals before taking steps to implement them.

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For general information on the Securities Investment Business Act ("**SIBA**"), see our publication Securities Investment Business in the Cayman Islands.

1. APPLICATION FOR REGISTERED PERSON (NEW APPLICANT)

A new applicant for registration must file Form APP-101-75 "Application for SIBA Registered Person", through the Cayman Islands Monetary Authority (the "**Authority**") REEFS portal, together with the required supporting information and the required application fee.

Information and documentary requirements include the following:

(a) client list (to include both regulated and unregulated entities);

(b) details of all directors, principals of the general partner and managing members (as appropriate) (to include at least two natural persons);

(c) details of senior officers or managers (excluding anti-money laundering officers ("**AML Officers**") - see further below);

(d) details of all shareholders who are natural persons, accompanied by a personal questionnaire for each shareholder with a shareholding of 10% or more;

(e) details of all corporate shareholders as well as the first and last names of each 10% or greater ultimate beneficial owner ("**UBO**"), accompanied by a personal questionnaire for each UBO;

(f) register of directors or equivalent showing persons who act in a similar capacity to a director;

(g) register of members/ shareholders/ managing members (as appropriate) reflecting the beneficial owners and UBOs;

(h) an organisational chart in pictorial format outlining whether the applicant operates as a single structure or has affiliates (both financial and non-financial) by way of common ownership. For each affiliate, the applicant must provide the (i) name of the entity; (ii) jurisdiction of incorporation; (iii) nature of the business; and (iv) name of the regulatory body who has oversight of the affiliate's business, if applicable; and

(i) details of the natural persons appointed as the AML Officers, together with their curriculum vitae in each case.

An applicant for registration as a registered person 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.

Companies incorporated under the Companies Act (2023 Revision) (the "**Companies Act**") must have a minimum of two directors who are individuals, or one corporate director, each of whom complies with the Directors Registration and Licensing Act, 2014 (the "**DRLA**") in order to register as a registered

person. Further information in relation to director and senior officer requirements of entities intending to register as registered persons can be found in section 3 below.

A person who carries on or purports to carry on securities investment business without being registered or licensed under the SIBA commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for one year, and in the case of a continuing offence, to a fine of ten thousand dollars for each day during which the offence continues.

2. MATERIAL CHANGES

Any change in the information required to be provided by registrants is considered to be a material change and written notification of each such change, including a detailed explanation of the nature of and reasons for the change along with supporting documentation relevant to the change, are to be submitted to be Authority **within 21 days after the change**.

3. DIRECTOR AND SENIOR OFFICER REQUIREMENTS OF A REGISTERED PERSON

3.1. Companies

If the registered person is a company incorporated under the Companies Act, it is required to have a minimum of

(a) two directors who are individuals; or

(b) one corporate director,

each of whom is complying with the DRLA.

If the registered person is a foreign company registered under Part IX of the Companies Act, it is required to have a minimum of two directors or equivalent officers.

3.2. Limited Liability Companies

A limited liability company formed and registered under the Limited Liability Companies Act (2021 Revision) is required to have a minimum of two managers complying with the DRLA.

3.3. Partnerships

An exempted limited partnership registered under the Exempted Limited Partnership Act (2021 Revision) (the "**ELP Act**") is required to have 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 ELP Act, at the level of the ultimate general partner);

A general partnership established, or a limited partnership registered under the Partnership Act (2013 Revision) is required to have a minimum of two partners

A limited liability partnership formed and registered under the Limited Liability Partnership Act (2023 Revision), may have one or more managing partners, failing which all of the partners will be managing partners.

Any alteration made in the senior officers (meaning a director, managing director, president, chief executive officer, partner, managing partner, general partner, ultimate partner, manager or someone who has a similar control function) of a registered person shall be notified to the Authority within 21 days of the alteration.

4. SHARES ISSUED OR TRANSFERRED

Shares in a company or interests in a limited liability company or a partnership which is a registered person shall not be issued and issued shares or interests shall not be voluntarily transferred or disposed of without the **Authority being notified within 21 days of the transfer or disposal**.

5. SEGREGATION OF PROPERTY

A licensee or a registered person must separately account for the funds and property of each client and for the licensee's or registered person's own funds and property.

6. POWERS OF THE AUTHORITY

The Authority may, whenever it considers it necessary, examine, by way of the receipt of regular returns, on-site inspections, auditor's reports or in such other manner as the Authority may determine, the affairs or business of any registered person for the purpose of -

a) assessing whether a licensee or registered person is undertaking its authorised activities in accordance with the SIBA and any regulations made under the SIBA;

b) confirming that the provisions of the Anti-Money Laundering Regulations (2023 Revision) (the "**AML Regulations**") are being complied with;

c) confirming that the licensee or registered person is in a sound financial position; or

d) carrying out any other functions of the Authority.

The Authority may require information from any registered person if at any time it appears to the Authority that a licensee or a registered person has failed to comply with any of the requirements under the SIBA or any regulation made under it, and the Authority may by written notice direct the licensee or registered person to ensure that the requirement is complied with within such period and on such terms and conditions as the Authority may specify and the licensee or registered person must comply with the notice.

The Authority has the power to:

- revoke the licence or cancel the registration;
- impose conditions or further conditions upon the licence or registration or amend or revoke any such conditions;
- 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;

- publish in the Gazette and in any official publications of the Authority a breach by any person of the SIBA, of any regulations made hereunder or of any lawful direction issued by the Authority;
- 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 AML Regulations;
- require the substitution of any director or officer of the licensee or registered person whenever appointed or the divestment of ownership or control;
- 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;
- 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;
- in the case of a reasonable belief that the licensee or registered person has materially contravened the AML Regulations, report the same to the Director of Public Prosecutions; or
- 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 below,

if it knows or has reasonable grounds to believe that a licensee or a registered person -

- is unable or appears likely to become unable to meet its obligations as they fall due;
- 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;
- has contravened any provision of the SIBA or the regulations or of the AML Regulations;
- has failed to comply with a condition of its licence or registration;
- 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
- has failed to comply with any lawful direction from the Authority.

7. ECONOMIC SUBSTANCE

A registered person who constitutes a "relevant entity" under the International Tax Co-operation (Economic Substance) Act (2021 Revision) (the "**ES Act**") and who acts as a discretionary manager of an investment fund (as defined in the ES Act) will be deemed to be carrying on the relevant activity of fund management business for the purposes of the ES Act and accordingly will be subject to the

economic substance test set out in the ES Act. See our publication Cayman Islands: Economic Substance Requirements for further details.

This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

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