

Directors Registration and Licensing in the Cayman Islands

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Preface

This publication has been prepared for the assistance of proposed directors of Cayman Islands mutual funds and certain Cayman Islands securities investment business companies. It deals in broad terms with the requirements of Cayman Islands 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 the Cayman Islands ("**Cayman**") on their specific proposals before taking steps to implement them.

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TABLE OF CONTENTS

1.	INTRODUCTION	4
2.	REGISTERED DIRECTORS	4
3.	PROFESSIONAL DIRECTORS	5
4.	CORPORATE DIRECTORS	6
5.	SURRENDER OF REGISTRATION OR LICENCE	8
6.	POWER AND DUTIES OF CAYMAN ISLANDS MONETARY AUTHORITY	8
7.	LICENSING AND REGISTRATION IN PRACTICE – WEB PORTAL	9

1. INTRODUCTION

The Directors Registration and Licensing Act, 2014[1] (as amended) (the "**Act**") regulates directors of certain entities established in Cayman. The subject entities, defined as "covered" entities, include regulated mutual funds under the Mutual Funds Act and certain "Registered Persons" under the Securities Investment Business Act[2].

There are three classes of directors which are regulated:

(a) registered directors, who comprise natural persons appointed as directors to fewer than twenty covered entities;

(b) professional directors, who comprise natural persons appointed as directors for twenty or more covered entities; and

(c) corporate directors, comprising bodies corporate appointed as directors for any covered entity.

The Act applies to each class of director whether or not the director is resident in Cayman.

2. REGISTERED DIRECTORS

2.1. Overview

Natural persons seeking to be appointed as a director of a covered entity for the first time are required to be registered with the Cayman Islands Monetary Authority ("**CIMA**") as a registered director in advance of taking up the position.

An application for registration may be refused by CIMA where the applicant has been convicted of a criminal offence involving fraud or dishonesty, or the subject of an adverse finding, financial penalty, sanction or disciplinary action by a regulator, self-regulatory organisation or a professional disciplinary body.

Registered directors will be subject to annual filing and fee requirements but are not required to maintain insurance.

There are significant penalties for failing to comply with the registration / licensing and annual filing and fee requirements.

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[1] The Act came into effect on 4 June 2014 pursuant to The Directors Registration and Licensing Law, 2014 (Commencement) Order, 2014 with the exception of sections 11(2)(a), 18(2)(a) and 24(1)(b) which shall come into force at a later date. These sections require CIMA to consider the capacity of the applicant professional director and/or a corporate director before granting a licence. Further, section 24(1)(b) requires CIMA to examine the capacity of registered directors, professional directors and corporate directors to carry out their duties and responsibilities as directors of covered entities.

[2] Companies to which section 5(4) and paragraphs 1 and 2 of the Fourth Schedule of the Securities Investment Business Act apply.

2.2. Fees

A director applying to be registered is required to pay an application fee together with a fee upon registration and an annual fee thereafter (payable on or before 15 January). A fee is also payable on surrender of registration.

2.3. Application Requirements

As part of the application process the director must provide CIMA with the following information:

(a) the full name, date of birth, nationality and country of birth of the applicant;

(b) the address of the principal residence of the applicant and the applicant's postal address if it is different;

(c) details as to whether the applicant has ever been convicted of a criminal offence involving fraud or dishonesty;

(d) details 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; and

(e) the names and registration numbers of the covered entities for which the applicant acts or proposes to act.

3. PROFESSIONAL DIRECTORS

3.1. Overview

Save as set out below, those natural persons seeking to be appointed as a director of twenty or more covered entities are required to apply for a licence with CIMA as a professional director in advance of taking up the position.

A director of a covered entity who is a natural person and is a director, employee, member, officer, partner or shareholder of a holder of a companies management licence or a mutual fund administrators licence is not required to be licensed as a professional director but is required to register as a registered director. A director of a covered entity who is a natural person and is a director, employee, member, officer, partner or shareholder of a fund manager of a mutual fund regulated under the Mutual Funds Act and that fund manager is registered or licensed by a prescribed overseas regulatory authority, is not required to be licensed as a professional director if the person acts as a director of a covered entity by virtue of that person's relationship to that fund manager and is registered as a registered director.

Professional directors must also maintain insurance with an authorised insurer.

Applicants must be fit and proper persons. The fit and proper person test is the same as set out in the Mutual Funds Act, focusing on (a) honesty, integrity, reputation; (b) competence and capability; and (c) financial soundness.

There are significant penalties for acting as professional director without complying with the licensing and annual filing and fee requirements.

3.2. Fees

A professional director is required to pay an application fee together with a fee upon licensing and an annual fee thereafter (payable on or before 15 January). There is also a fee for surrender of a professional director licence.

3.3. Application Requirements

As part of the application process the professional director must provide CIMA with the following information:

(a) the full name, date of birth, nationality and country of birth of the applicant;

(b) the address of the principal residence of the applicant and the applicant's postal address if it is different;

(c) personal details in the form of a questionnaire prepared by CIMA;

(d) not less than three references acceptable to CIMA, including one character reference and one reference verifying the good financial standing of the applicant and a police or other certificate from a source acceptable to CIMA that the applicant has not been convicted of a serious crime or any offence involving dishonesty;

(e) the names and registration numbers of the covered entities for which the applicant proposes to act; and

(f) evidence of insurance coverage (minimum aggregate cover of one million dollars and a cover of one million dollars for each and every claim).

4. CORPORATE DIRECTORS

4.1. Overview

Those companies seeking to be appointed as a corporate director of a covered entity for the first time are required to be licensed with CIMA in advance of taking up the position.

A holder of a companies management licence or a mutual fund administrator licence providing directors to or acting as director for a client which is a covered entity is not required to be licensed as a corporate director.

A corporate director must be registered as an ordinary resident, ordinary non-resident, exempted or foreign company in accordance with the Companies Act, must appoint to its board at least two natural persons who are registered or licensed under the Act and have any new or additional director appointed to its board approved by CIMA prior to that appointment.

Corporate directors (and members of their board) must themselves be fit and proper persons and comply with annual filing and fee requirements. Corporate directors must also maintain insurance.

There are significant penalties for acting as a corporate director without complying with the licensing and annual filing and fee requirements.

4.2. Fees

A corporate director is required to pay an application fee together with a fee upon licensing and an annual fee thereafter (payable on or before 15 January). There is also a fee for surrender of a corporate director licence.

4.3. Application Requirements

As part of the application process the corporate director must provide CIMA with the following information:

(a) if a foreign registered company under the Companies Act, the names and addresses of one or more persons authorised to accept service on its behalf or notices;

(b) evidence of the company's incorporation;

(c) the names and registration numbers of the covered entities for which the applicant acts or proposes to act;

(d) the full names, addresses and nationalities of all directors, managers and officers of the company;

(e) the full names, addresses and nationalities of each shareholder who holds more than ten per cent of the company's issued share capital or total voting rights;

(f) personal details, to be provided by all of the directors, managers and officers of the company, in the form of a questionnaire prepared by CIMA;

(g) personal details of each shareholder or beneficial shareholder who is a natural person holding more than ten per cent of the company's issued share capital or total voting rights, in the form of a questionnaire prepared by CIMA;

(h) not less than three references acceptable to CIMA verifying the good character and financial standing of each director, manager and officer of the company and each shareholder and each beneficial shareholder who is a natural person holding more than ten per cent of the applicant's issued share capital or total voting rights;

(i) police certificates for each director, manager, officer and shareholder;

(j) certified and authenticated copy of the constitutional documents (translated as appropriate);

(k) the names and addresses of the principal and registered offices of all parent companies and all subsidiary companies of the company;

(l) a certificate of good standing from all parent companies and all subsidiary companies of the company licensed or registered by an overseas regulatory authority;

(m) a certificate of good standing from all overseas regulatory authorities that regulate the company; and

(n) evidence of insurance coverage (minimum aggregate cover of one million dollars and a cover of one million dollars for each and every claim).

5. SURRENDER OF REGISTRATION OR LICENCE

Once registered as a director, even if you have resigned or retired, in order to cease being a director under the Act, it is necessary to pay the surrender fee and submit the following:

(a) updated register of directors;

(b) a signed PDF letter confirming that you have resigned as a director from all covered entities, that you no longer plan to act as a director on covered entities, and that if you should wish to resume directorship services to covered entities after surrendering your registration, that you will re-apply under the Act.

6. POWER AND DUTIES OF CAYMAN ISLANDS MONETARY AUTHORITY

CIMA is required to maintain a register of directors to include the name and address of the director(s), location of the registered office and date of registration or licence issuance. CIMA must maintain a general review for the requirements for the qualification of directors, examine the capacity of registered directors, professional directors and corporate directors to carry out their duties and to give directions where necessary and, *inter alia*, whenever it considers it necessary to examine by way of scrutiny of prescribed regular returns or on-site inspections, or in such other manner as it may determine, the affairs or business of any registered director, professional director or corporate director.

CIMA has powers to impose administrative fines on licensed and regulated individuals and entities. The Monetary Authority (Administrative Fines) Regulations (2022 Regulations) (the "**Regulations**") contain the prescribed provisions attracting fines, the basis upon which discretion may be exercised, the process for imposing fines, appeals, payment and enforcement. Schedule 1 of the Regulations sets out the prescribed regulatory act provisions and corresponding breach categories in relation to a wide range of legislation including the Law.

The Act was amended in 2023 to make clear that offences may be committed by partnerships, exempted limited partnerships, limited liability partnerships and unincorporated associations, and that partners and persons concerned in the management or control of unincorporated associations may also be liable where an offence is committed with their consent or connivance or is attributable to their neglect.

The balance of CIMA's powers broadly mirror those contained in the Mutual Funds Act.

7. LICENSING AND REGISTRATION IN PRACTICE – WEB PORTAL

Application and payment for registration and licensing will be processed through CIMA's online registration portal. CIMA will issue a unique identification number to each director upon application, and it will be that number that the director will use to log on to the web portal.

It can take up to 48 hours to approve and register a registered director. Professional directors and corporate directors will receive confirmation of their licence within four weeks.

Directors will be required to update CIMA within 21 days in the event there is a change to the information provided to CIMA. At the time of filing the annual return, the director will be required to confirm that there are no changes to the information provided in the application.

Information obtained by CIMA as part of the registration and licensing process will not be publicly available. The public will, however, be able to search for the director's name to see whether the director has been registered or licensed in accordance with the Act.

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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