

CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, reflecting the sky and surrounding environment. The building is set against a clear sky. In the foreground, there is a paved plaza with a geometric pattern of light and dark tiles. A dark blue horizontal bar is positioned below the title text.

The Licensing and Regulation of Banks and Trust Companies in the Cayman Islands

Preface

This publication has been prepared for the assistance of those who are considering the formation of banks and trust companies in the Cayman Islands (“**Cayman**” or “**the Islands**”). It deals in broad terms with the requirements of Cayman law for the establishment and operation of such entities. It is not intended to be exhaustive but merely to provide an outline of the rules by which banks and trust companies are licensed and regulated in Cayman for which we hope will be of use to the clients of Conyers.

Before proceeding with the incorporation of a bank or trust company in Cayman, clients are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

We also recommend that our clients seek legal advice in Cayman on their specific proposals before taking steps to implement them.

Conyers

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1. INTRODUCTION

The governing legislation is The Banks and Trust Companies Act (the “**Act**”). The Act makes it an offence to conduct banking business or trust business without the appropriate licence. Regulations have been made under the Act for various purposes, notably to prescribe the information that must be provided in licence applications and to prescribe the fees payable by licensees (collectively, the “**Regulations**”). The Act is administered by the Cayman Islands Monetary Authority (“**CIMA**”) which was established under CIMA Act under the guidance of the Bank of England. The statutory definition of banking business is: “the business of receiving (other than from a bank or trust company) and holding on current, savings, deposit or other similar account money which is repayable by cheque or order and may be invested by way of advances to customers or otherwise”. The statutory definition of trust business is “the business of acting as trustee, executor or administrator”.

The Act and Regulations are not intended to create a comprehensive and detailed code of rules but rather to provide a legislative framework within which the requirements can be tailored to the circumstances of the particular case. This was also the approach of the previous legislation (the Bank and Trust Companies Regulation Act, 1966) and it seems to have worked well under the administration of a succession of banking inspectors who, prior to CIMA, were Bank of England personnel seconded through the International Monetary Fund. Key CIMA personnel now regularly attend training courses organized by the Bank of England.

To date the number of licensed banks and trust companies has risen to a number well in excess of five hundred, including most of the largest international banking institutions.

Cayman supports the efforts of the Basel Committee on Banking Regulations and Supervisory Practices to achieve international convergence. Though not bound to do so, Cayman can be expected to adhere to the decisions of the Basel Committee insofar as they are relevant to Cayman’s situation. CIMA released its Market Discipline Disclosure Requirements (Pillar 3) Rules and Guidelines in November 2020 which implement the disclosure requirements of Pillar 3 under the Basel II framework and summarise the requirements outlined by the Basel Committee on Banking Supervision (“**BCBS**”) in a suite of associated BCBS documents. The Pillar 3 requirements promote market discipline amongst banks by increasing transparency and allowing for timely scrutiny by stakeholders including investors, analysts, financial customers and other market participants. The requirements also serve to strengthen core business practices that mitigate banks’ exposure to risks in addition to the level of capitalisation. The Basel II framework applies to banks that are locally incorporated in the Cayman Islands, all home regulated banks and host regulated banks (subsidiaries or foreign banks) with or without a physical presence. Branches of foreign banks operating in the Cayman Islands will not be required to maintain a separate capital requirement and therefore will be excluded from the local Basel II requirements.

2. LICENSING

2.1. Categories of licence

There are three categories of banking licence and three categories of trust licence. An institution may have both a banking licence and a trust licence.

The three categories of banking licence are:

- An “A” banking licence – this permits domestic business with residents of Cayman as well as offshore business. Relatively few Class A licences are issued.
- A “B” banking licence – this permits only offshore business. The offshore business may be conducted from offices in Cayman though that is not a requirement. Most banking licences are of this category.
- A restricted “B” banking licence – this is subject to the same limitation as an unrestricted “B” banking licence (see above) but in addition the licensee is severely restricted as to the customers from whom it may solicit or receive funds. At the licensing stage a list of customers must be agreed with CIMA which will not normally permit a list of more than six names. Restrictions may also be imposed on the use of funds.

To be specific, the restriction as stated in subsection 6(6) of the Act as follows:

The holder of a “B” licence shall not:

- (a) take deposits from any person resident in Cayman, other than another licensee, or an exempted or an ordinary non-resident company which is not carrying on business in the Islands;
- (b) invest in any asset which represents a claim on any person resident in the Islands, except a claim resulting from:
 - (i) a loan to an exempted or an ordinary non-resident company not carrying on business in the Islands; or
 - (ii) a loan by way of mortgage to a member of its staff or to a person possessing or being deemed to possess Caymanian status under the Immigration Act, for the purchase or construction of a residence in the Islands to be owner-occupied; or
 - (iii) a transaction with another licensee; or
 - (iv) the purchase of bonds or other securities issued by the Government, a body incorporated by statute, or a company in which the Government is the sole or majority beneficial owner.

The categorisation of trust licences is different:

- A trust licence – this permits trust business onshore and offshore.
- A restricted trust licence – the licensee is restricted to an agreed list of clients. CIMA will not usually permit a list of more than six names.
- A nominee (trust) licence – licences in this category may be given only to wholly-owned subsidiaries of existing licensees (banking or trust) where the sole purpose of the subsidiary is to act as the nominee of its parent. Licences in this category are outside the scope of this publication.

2.2. Who may apply for a licence?

There are no formal restrictions but it has become difficult for anyone other than a branch or subsidiary of an established banking or financial institution to obtain a banking licence in any category. This is less true of trust licences though most are held by subsidiaries of established banking or trust institutions. The category of restricted trust licences caters principally to individuals who wish to form their own trust companies to administer their family trusts.

2.3. A Cayman company or a Cayman branch of a foreign company?

A licence may be sought either for a company incorporated in Cayman (which we sometimes refer to in this publication as a “local company”) or for a company incorporated elsewhere which intends to establish a Cayman branch. In the case of a branch it is not always essential that there be a staffed operation in Cayman (but see section 2.7 below).

The licensing and continuing regulation of local companies and branches differ in some important respects. The slightly less intensive regulation of branches reflects the view that primary responsibility for their regulation rests with the regulatory authorities in the home country. If it appears to CIMA that the home country regulation of a branch licensee might not be adequate, the applicant may be encouraged to licence a Cayman subsidiary instead.

In terms of cost incurred in Cayman the branch has the edge over the local company. The requirements that local companies should have local auditors and should file more frequent financial returns with CIMA are the main contributors to the additional expense.

Typically, a number of other factors will be taken into account in deciding whether to licence a branch or a local company. From a Cayman legal standpoint there may, for example, be considerations of the applicability of foreign laws and decrees, flight arrangements (for the licensee or its clients and customers), corporate powers, confidentiality of customer information and, as regards trust business, some special considerations which generally result in the choice of a local company rather than a branch.

Local companies are incorporated under the Companies Act (the “**Companies Act**”) in the usual way; the Banks and Trust Companies Act is concerned only with the licensing, not incorporation. The Cayman branch of a foreign company must be registered under the branch registration rules of the Companies Act. Those unfamiliar with the Companies Act are referred to our publication entitled “Cayman Islands Exempted Companies”.

2.4. Net worth requirements

The Cayman authorities will require a level of net worth appropriate to the scale and nature of the business to be conducted. However, there are statutory minima. For an “A” banking licence, a “B” banking licence and a trust licence the minimum is CI\$400,000 (approximately US\$480,000). For a restricted “B” banking licence and a restricted trust licence the minimum is CI\$20,000 (approximately US\$24,000).

CIMA adopts the guidelines set by the Basel Committee for Bank Regulation and Supervisory Practices for the calculation of the capital adequacy ratio. The Basel Committee recommends a

minimum capital adequacy ratio of 8%. However, CIMA requires subsidiaries to maintain a minimum capital adequacy ratio of 12% and privately owned or affiliated banks a minimum of 15%.

Local companies are generally capitalised with cash paid for equity shares. Subject to the Basel Committee's rules and guidelines alternative methods of capitalisation may be approved in particular cases. Parent company guarantees are not acceptable as a substitute for capital. Bearer shares are not acceptable and are prohibited under the Companies Act.

To assist CIMA in assessing the appropriate net worth requirement local company applicants are required to provide projected financial statements for their first two years of operation.

The required net worth must be maintained at all times. The statutory definition of "net worth" is: "excess assets over liabilities as presented under applicable generally accepted accounting principles subject to adjustments for non-admitted assets as determined by CIMA".

2.5. Professional expertise

Every applicant must demonstrate banking or trust expertise. See Appendices A and B.

2.6. Presence in Cayman

Where the licensee is a branch or subsidiary of a licensed bank in a country outside Cayman there is no requirement for that licensee to have its own staffed operation in Cayman, nor is it necessary to have any Cayman-resident directors or officers. It is also not required to keep business books and records in Cayman.

However, a licensee must designate a principal office in Cayman and an authorised agent resident in Cayman to be the intermediary between the licensee and the Cayman authorities. If the licensee will have Cayman-resident directors or officers, two such individuals may be appointed; otherwise the authorised agent must generally be another banking institution holding a Class "A" banking licence or two named officers of such an institution. The authorised agent must be provided with the necessary information to enable it to perform its role as intermediary; in other words it must be equipped to respond promptly to questions from CIMA and to discuss the condition and operations of the licensee on an informed basis.

The requirements of the Companies Act must also be observed. A local company must maintain a registered office in Cayman; a foreign company with a Cayman branch must appoint at least one person resident in Cayman with authority to accept on its behalf services of process and notices.

2.7. Regulatory authorities in other jurisdictions

When an established banking or trust institution seeks a licence, whether for a Cayman subsidiary or a Cayman branch, CIMA must be satisfied that the regulatory authority in the home country is aware of the application and has no objection to it. CIMA will normally make direct contact with the appropriate authority in the home country and will, among other things, seek an assurance as to good standing.

One of the continuing requirements for local companies is that no subsidiary, branch, agency or representative office may be established in any other jurisdiction without the prior approval of CIMA. This approval will not be given unless CIMA is satisfied that any necessary regulatory approval has been obtained in the other country and that the consolidated position will remain satisfactory in supervisory terms.

2.8. The licensing process

A preliminary meeting with CIMA is usually required before filing the licence application. This is almost invariably so with local company applicants, even when the local company will be the subsidiary of a major bank. It may be unnecessary for a branch applicant if, for example, a major bank is simply establishing a Eurodollar booking operation. The purpose of the meeting is to discuss the proposed operations and related matters. The meeting generally serves a useful purpose from the applicant's point of view, providing a strong indication of the likely outcome and also an opportunity to hear at first hand the views of CIMA on regulation.

Another preliminary step is that the proposed name of a local company applicant must be cleared with both CIMA and the Registrar of Companies.

The application for a licence must be made in writing addressed and sent to CIMA. There is no prescribed application form. The application is normally made on the applicant's behalf by its Cayman attorneys or by the banking institution which will be acting as authorised agent. Appendix A to this publication lists the information and documents that we require in order to make an application in the case of a locally incorporated company; Appendix B lists the information and documents we require for a branch application.

CIMA reviews applications in detail, makes such enquiries as it considers appropriate and may, if satisfied that the carrying on of such business will not be against the public interest, grant a licence in principal to such a person or company subject to such terms and conditions, if any, as CIMA may deem necessary.

If approval in principal is granted, one may proceed with the Companies Act formalities - incorporation in the case of a local company, registration in the case of a branch of a foreign company.

In the case of a branch application one then returns immediately to CIMA for issuance of the licence upon payment of the licence fee - assuming that no other features of the application remain incomplete. In the case of a local company one must first introduce the requisite net worth and then prepare and have audited financial statements showing the paid-in capital. One may then return to CIMA for issuance of the licence upon payment of the licence fee - again assuming that no other features of the application remain incomplete.

Only after the licence has actually been issued may business commence.

The timing of the process typically depends on the complexity or difficulty of the application. It may also be affected by the work load of CIMA. As a general rule at least three weeks should be allowed for the first stage of the process - from filing the application until notification of the decision to give approval in principle. One week should be more than sufficient for the second stage if it has been properly pre-planned - registration or incorporation, capitalisation and audit. A further week should normally be

allowed for the third and final stage - obtaining actual issuance of the licence. In cases of real urgency these processes can usually be expedited.

2.9. Licensing costs

A schedule of the principal licensing costs that are incurred in Cayman is available upon request.

3. CONTINUING REGULATION

3.1. General

The Cayman system for the continuing regulation of banks and trust companies is document-based as in the United Kingdom, as distinct from the inspection systems (adopted in the USA or Germany, for example) which depend primarily on inspection visits by regulatory personnel. Of course CIMA may, if it has any concerns about a licensee, exercise wide powers to conduct investigations, to obtain access to books and records, to question officers, managers and others, to require licensees to make certain public disclosures at its specification and to obtain search warrants.

This publication describes only the standard regulatory requirements; in particular cases licences may be issued subject to special requirements.

3.2. Approval for any changes in the business

CIMA's approval is required if a licensee wishes to conduct business other than that described in its licence application. Strictly speaking, this applies only in the case of banks with "B" licences but it is politic that licensees in every category advise CIMA in advance of any major change in policy.

3.3. Annual financial statements

Audited financial statements must be filed with CIMA within three months of the year-end. If an extension of time is needed, an application must be made within the three-month time limit, must state how much extra time is required and must explain the reasons.

Local companies (but not branches) must have approved local auditors. Most of the major international firms have offices in Cayman, for example:

- KPMG
- PricewaterhouseCoopers
- Deloitte & Touche
- Rawlinson and Hunter
- Ernst & Young

On a change of auditors by a local company the Inspector may call upon the former auditor to explain the circumstances.

Branch licensees must file not only the audited financial statements of the company as a whole but also separate unaudited financial statements for Cayman branches.

3.4. Quarterly returns

For local companies (not branches) CIMA requires unaudited quarterly returns in the prescribed form. One is a form of balance sheet, the other is a form of re-pricing maturity analysis. Unless otherwise agreed with CIMA these returns must be filed within 21 days after the end of the quarter.

3.5. Annual visits

Unless otherwise agreed by CIMA an annual visit should be made by an appropriate senior officer to discuss the operations of the licensee. In the case of a local company CIMA usually requires the first annual visit to be made within six months of the licence being granted.

3.6. Maintenance of adequate net worth and ratios

Net worth and ratio requirements have been discussed above. CIMA may require a licensee to increase net worth.

3.7. Approval for changes in the directors or senior officers

In the case of local companies prior approval must be obtained for any change in the directors or other senior officers of the licensee. In the case of branch licensees, exemption from this requirement may sometimes be obtained at the licensing stage, though CIMA must still be informed after the fact of any change. The approval of a director or senior officer may be revoked by CIMA; revocation is automatic in the case of bankruptcy or conviction of an offence involving dishonesty.

A licensee must at all times have at least two directors.

3.8. Approval for changes in shareholdings

No shares (or any beneficial interest in shares) may be issued, transferred or otherwise disposed of without the prior approval of CIMA. Exemption from this requirement may be given if the shares of the organisation are dealt in on a recognised stock exchange. This rule is concerned with control and, particularly if the licensee will be owned through intermediate companies, conditions may be imposed at the licensing stage requiring approval or notification of changes in intermediate or ultimate shareholdings.

3.9. Approval for changes in name

In the case of local companies a change in name requires the prior written approval of CIMA. Branch licensees should notify CIMA of any name change. Approval to a name may be withheld (and an existing approval may be revoked) to prevent confusion with the names of other banking or trust institutions and to avoid false impressions as to patronage or status. The Companies Act contains other name restrictions.

3.10. Approval for changes in principal office or local agents

These requirements have been discussed above. Any change requires the prior approval of CIMA.

3.11. Notification of other changes

It is politic (even when not obligatory) to notify CIMA of any significant departure from the information given in the licence application.

3.12. Outward branching

As discussed above, the prior written approval of CIMA is needed by a local company before any subsidiary, branch, agency or representative office is established in any other jurisdiction.

3.13. Compliance with undertakings and conditions

A licensee must comply strictly with all undertakings given at the time of licensing and all conditions imposed upon the licence.

3.14. Government fees

The annual licence fee is due on or before 15th January in each year. In the case of late payment CIMA may require a surcharge of one-twelfth of the basic fee for every month or part month of delay. Government fees are also payable annually under the Companies Act.

3.15. Regulations

The Governor is empowered to make Regulations for carrying out the purposes or provisions of the Banks and Trust Companies Act. Regulations have been made prescribing the information to be provided with licence applications and prescribing the fees payable by licensees. Regulations may also be made to control the form of advertising by licensees. No such regulations have yet been made or are presently proposed.

3.16. Government powers and sanctions

The Act gives CIMA a range of powers. It is beyond the scope of this publication to deal with this, subject in detail but in broad terms the powers are designed (i) to give CIMA full access to documents and information when needed and (ii) to enable appropriate remedial actions to be taken if a licensee is in difficulty or default or is conducting business in an unacceptable manner.

3.17. Surrender and revocation of licence

The Act sets out the circumstances under which a licence may be surrendered by the licensee and the grounds upon which a licence may be revoked by CIMA. The grounds for revocation include the belief by CIMA that a licensee is carrying on business in a manner detrimental to the public interest.

3.18. Annual Survey

Each year all licensees are asked to cooperate in the Cayman Banking Survey, which is primarily for statistical purposes rather than regulatory purposes. The survey questionnaire forms are for both offshore and resident banks. For this purpose a licensee is regarded as “resident” if it maintains its own office in Cayman and directly employs its own staff in Cayman; otherwise it is “offshore”.

3.19. Compliance with Companies Act

For the continuing requirements of the Companies Act see our publication entitled “Cayman Islands Exempted Companies”.

4. ECONOMIC SUBSTANCE

The International Tax Co-Operation (Economic Substance) Act (the “**ES Act**”) applies to a defined class of relevant entities including exempted companies and exempted partnerships, foreign companies and foreign partnerships registered in Cayman, limited liability companies, general partnerships (other than local partnerships) and limited liability partnerships that are required, subject to what is said below, to maintain economic substance in the Cayman Islands unless they are (i) tax resident outside the Cayman Islands; (ii) an investment fund (including entities through which any such fund invests or operates); or (iii) a not-for-profit company.

The ES Act requires that all Cayman Islands entities notify the Cayman Tax Information Authority (“**TIA**”) of, amongst things, whether or not it is carrying on a “relevant activity” (as defined in the ES Act and as discussed further below) and, if so, whether or not it is a “relevant entity”.

The notification to the TIA is by way of an annual Economic Substance Notification (“**ESN**”) which must be filed prior to an entity filing its annual return with the General Registry’s Corporate Administration Portal (“**CAP**”). As general partnerships are not registered through CAP, the Department of International Tax Compliance (the “**DITC**”) has advised that general partnerships must file an ESN in the form of a spreadsheet to registered office service providers for submission to the DITC’s Economic Substance Team at DITC.EScompliance@gov.ky¹.

A relevant entity is subject to the ES Act from the date on which it commences a relevant activity unless the entity was in existence prior to 1 January 2019 in which case it was required to comply with the ES Act by 1 July 2019. Non-compliance with the ES Act will result in significant financial penalties and continued non-compliance may result in an application by the TIA to the Grand Court for an order that the entity is defunct.

The International Tax Co-operation (Economic Substance) (Amendment of Schedule) Regulations, 2021, together with the International Tax Co-operation (Economic Substance) (Prescribed Dates) (Amendment) Regulations, 2021 (the “**Amendment Regulations**”) expanded the range of entities subject to the ES Act to include partnerships, exempted limited partnerships and foreign limited partnerships from 1 January 2022 (for entities that were in existence as at 30 June 2021) or the date of commencement of a relevant activity (if they entity was not in existence as at 30 June 2021 when Amendment Regulations commence).

4.1. Relevant Activities

Relevant entities will be required to meet the economic substance test in respect of their relevant activities in the Cayman Islands. The categories of relevant activities include the following which are further defined in the ES Act:

¹ This manual process for general partnerships has been adopted on the basis of advice from the DITC on 29 March 2023.

- (a) Banking business;
- (b) Distribution and service centre business;
- (c) Financing and leasing business;
- (d) Fund management business;
- (e) Headquarters business;
- (f) Holding company business;
- (g) Insurance business;
- (h) Intellectual property business; and
- (i) Shipping business.

4.2. Economic Substance Requirements

For relevant entities carrying on relevant activities, the ES Act requires that they:

- (a) conduct core income generating activities (“**CIGAs**”) (see further below) in relation to the relevant activity;
- (b) be directed and managed appropriately in the Cayman Islands related to the relevant activity; and
- (c) with regard to the level of relevant income from the relevant activity carried out in the Cayman Islands, have an adequate:
 - (i) amount of operating expenditure incurred in the Cayman Islands;
 - (ii) physical presence (including maintaining a place of business or plant, property and equipment) in the Cayman Islands; and
 - (iii) number of full-time employees or other personnel with appropriate qualifications in the Cayman Islands.

Relevant entities carrying on the business of a pure equity holding company (one that only holds equity participations in other entities and only earns dividends and capital gains) will have reduced requirements such that they will need to comply with all filing requirements under the Companies Act and have adequate human resources and premises in the Cayman Islands for holding and managing equity participations in other entities.

Each relevant entity that is carrying on a relevant activity and is required to satisfy the ES Test will be required to file an annual return with the TIA in respect of their status under the ES Act.

4.3. Core Income Generating Activities

CIGAs are defined in the ES Act to mean activities that are of central importance to a relevant entity in terms of generating income and that are being carried out in the Cayman Islands including, in relation to insurance business, (i) predicting or calculating risk or oversight of prediction or calculation of risk; (ii) insuring or re-insuring against risk; and (iii) preparing reports or returns, or both, to investors or CIMA, or both. CIGAs may be outsourced provided that the relevant entity is able to monitor and control the carrying out of the CIGA. The TIA will only accept the relevant entity's claim to have satisfied the ES Test by means of domestic outsourcing if the information is verified by the service provider. Such verification must be made within thirty days of the relevant entity providing the same information to the TIA.

Service providers undertaking outsourcing functions are required to register with the DITC so that the DITC can independently verify the engagement and nature of the services provided.

5. OTHER MATTERS

5.1. Administrative Fines

CIMA has significant new powers to impose administrative fines on licensed and regulated individuals and entities. These range from non-discretionary fines of CI\$5,000/US\$6,100 for a minor breach to CI\$1,000,000/US\$1,220,000 for a very serious breach. CIMA would be able to impose cumulative fines of up to CI\$20,000/US\$24,390 for a single minor breach. It is important that banks and trusts companies take note, as contraventions or failures to act could give rise to fines. The Monetary Authority (Administrative Fines) 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 Banks and Trust Companies Act – these categories range from offences considered to be minor in nature to breaches categorised as very serious.

5.2. Currency and exchange controls

Cayman does not have a central bank. The local currency, Cayman dollar, is managed by CIMA which, amongst other things, issues an annual report on the economy. The government does not undertake to be a lender of last resort and there is no governmental insurance of deposits. The local clearing banks run their own clearing house.

The Cayman dollar has been pegged to the United States dollar at the rate of CI\$.82 to US\$1.00 since 1974.

There are no exchange controls in Cayman. In general all currencies may be transferred freely into and out of Cayman. There are no restrictions on dealing in gold and other precious metals.

5.3. Cayman taxation

Cayman has no corporation tax, income tax, capital gains tax, inheritance tax, gift tax, wealth tax or, indeed, any other form of tax that might foreseeably be relevant to a bank or trust company, its shareholders or its customers save:

Registration and licensing fees: Fees of this description are payable under both the Banks and Trust Companies Act and the Companies Act. Fees of this description are also payable in respect of other categories of business activity and in respect of work permits.

Stamp duties: A number of categories of document attract Stamp Duty and in some cases the duty is calculated on an ad valorem basis.

Import duties: Rates vary according to the nature of the goods imported but in general the rate is twenty percent.

5.4. Work permits and labour laws

Work permits are required for any persons not of Caymanian status who are gainfully occupied in Cayman whether on an indefinite or temporary basis. With some exceptions most work permits will not be renewed beyond a period of 7 years.

The Labour Act regulates the terms of employment of persons in Cayman, and includes provisions affecting leave, remuneration, working hours, severance pay, unfair dismissal and health, safety and welfare. The Pensions Act and the Health Insurance Act require employers to provide approved pension and health insurance for most categories of employee.

5.5. Other activities

A licence under the Banks and Trust Companies Act authorises only the banking or trust business for which it was granted. Other business activities may require licensing under other legislation. For example, the holder of a trust licence is exempted automatically from the licensing requirements of the Companies Management Act but is not exempted from any of the licensing requirements under the Insurance Act and so may not (unless licensed) provide insurance management facilities or act as an insurance agent or broker. All local business activities require licensing and any investment in local real estate should be reviewed with an eye to applicable licensing requirements.

5.6. Data Protection and Confidentiality

The Data Protection Act and associated regulations (the “DPL”) came into force on 30 September 2019 and give effect to the rights of privacy in relation to personal data while ensuring that certain exceptions are allowed.

The DPL defines personal data as “data relating to the data subject” and includes markers identifying physical, genetic, cultural and social identity (among other elements). There is also a concept of “sensitive” personal data which includes a data subject’s racial or ethnic origin, their political opinions and their physical or mental health. Additional obligations must be met when processing sensitive personal data.

The DPL applies where either (a) the data controller is established in the Cayman Islands and is processing personal data in the context of that establishment or (b) the data controller is not established in the Cayman Islands but personal data is processed in the Cayman Islands other than for the purposes of transit of data through the jurisdiction. Subject to certain exceptions, data cannot be transferred outside the jurisdiction unless that jurisdiction has adequate levels of protection for the rights and freedoms of the data subjects in relation to the processing of such data.

The DPL contains a number of obligations for the processing and protection of personal data, including the adoption of appropriate technical and organisational measures. Personal data can only be used by the data processor for the lawful purpose(s) for which it was obtained and should not be kept any longer than necessary for that purpose.

A data subject is granted rights under the DPL regarding information about the use of their personal data, including the intended recipients of such data. There are opt out obligations relating to use of data for marketing and the data controller is obliged to make notifications in the event of breaches of its obligations under the DPL.

There are exceptions to the general duties of the data controller under the DPL, including the safeguarding of national security and the prevention of crime. Penalties for breach of the DPL can include a fine of CI\$100,000 / US\$121,950 and/ or imprisonment for a term of five years.

Guidance has been drafted to expand on the concepts within the DPL for both individuals and for organisations in terms of their rights and obligations.

The Confidential Information Disclosure Act, 2016 (the “**CID Act**”) provides for circumstances in which the disclosure of confidential information may be made by a person who owes a duty of confidence. The CID Act also provides an avenue by which a person may be permitted by the Cayman Islands Court to give confidential information in evidence before any court, tribunal or other authority. A person who intends to or is required to give evidence and the evidence consists of or contains confidential information is required to apply to the Cayman Court for directions unless the principal to whom the duty is owed has consented expressly.

As regards the disclosure of information and production of documents for purposes of foreign legal proceedings the Evidence (Proceedings in Other Jurisdictions) Act 1975 of England was extended to Cayman in 1978, giving the courts of Cayman discretionary authority to respond to foreign requests for assistance. Claims to privilege (in Cayman or in the requesting country) are respected. In the case of confidential information or documents it is again necessary for a Judge of the Grand Court to give approval under the CID Act, 2016.

5.7. Money-laundering and other criminal activity

As an aspect of ongoing regulation, CIMA requires licensed banks to maintain adequate systems to prevent their facilities from being used for illegal purposes. CIMA and the various professional associations in Cayman, including the Bankers Association, have jointly adopted Guidance Notes which place their members under an obligation to ensure that customer identification is satisfactorily achieved and which recognises their responsibility in the international context to prevent money laundering and other illegal activities.

Cayman has long taken an aggressive stance against money laundering, drug trafficking and terrorist financing. Legislation dating back decades has been repeatedly revised and shored up in the constant effort to remain in compliance with international standards in these matters, and to safeguard the jurisdiction from criminals. In March 2022, the Anti-Money Laundering Unit released the Cayman Islands' 2021 National Risk Assessment ("**NRA**") which evaluated the money laundering, terrorist financing and proliferation financing risks faced in the Cayman Islands. Amongst its findings, the NRA concluded that, given the Cayman Islands' status as an international financial centre, the Cayman Islands' greater risk exposure is to proceeds-generating crimes committed overseas, in particular, foreign proceeds of crime ("**FPOC**") through fraud, corruption and tax evasion. Banks, securities business and investments and funds face the primary exposure to FPOC while exempt companies are the most implicated corporate structure.

The Proceeds of Crime Act ("**PCA**") is the primary legislation intended to combat money-laundering in the Cayman Islands and applies to entities in the regulated sector (which includes persons regulated under the Act). The legislation reflects recommendations made by the Financial Action Task Force ("**FATF**") to develop and improve the Cayman Islands' legal systems and mechanisms to counter the laundering of money from drug trafficking and other criminal proceeds.

The Anti-Money Laundering Regulations (the "**AML Regulations**") are promulgated under the PCA and apply to persons engaged in relevant financial business, which includes licensees under the Act carrying on banking or trust business. The AML Regulations require compliance with, and the identification of assets subject to, targeted financial sanctions. CIMA has also published Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing and Proliferation Financing in the Cayman Islands. The Terrorism Act outlines offences in relation to the instruction and training of, and participation in, terrorist organisations, terrorist acts and the use and possession of terrorist property. It is an offence to fail to disclose knowledge or a suspicion where information may have prevented a terrorist act or led to an arrest or prosecution under the Terrorism Act. The money laundering offences under the PCA can be summarised as 'acquiring' criminal property, 'concealing' or 'transferring' criminal property from the Cayman Islands, entering into arrangements for the facilitation of acquiring or using criminal property, failing to disclose knowledge or a suspicion of criminal conduct and 'tipping off' possible offenders as to an investigation or report of suspicious activity. Significant criminal penalties, including potential incarceration, apply to these primary money laundering offences.

The Anti-Money Laundering (Class A and Class B Bank Threshold Reporting) Regulations, 2022 ("**Threshold Regulations**") came into effect on 1 March 2022 and require Class A and Class B Banks to report to the Financial Reporting Authority (the "**FRA**") every month in respect of threshold transfers carried out within the reporting period. "Threshold transfers" refer to wire transfers sent or received by Class A and Class B Banks in the amount of, or exceeding, USD\$100,000.00. Reports must contain details prescribed in regulation 3 of the Threshold Regulations unless no threshold transfers have been carried out during the reporting period, in which case the bank must submit a 'nil' report stating the same. Reports must be submitted by the last business day of the month following the end of each reporting period, unless the FRA has granted a prior written extension. Failure to submit a report is an offence liable on summary conviction to a fine of CI\$5,000. If a bank knowingly or recklessly provides false or misleading information to the FRA the bank is liable on summary conviction to a fine of CI\$10,000.

Separate offences apply to certain persons in the regulated sector who fail to meet the requirements imposed upon them under the PCA. Persons in the regulated sector (such as banks) are required to appoint a Money Laundering Reporting Officer (“**MLRO**”) and a Deputy Money Laundering Reporting Officer to act whenever the MLRO is not available. Entities conducting “relevant financial business” must also designate an Anti-Money Laundering Compliance Officer who is tasked with ensuring that the AML Regulations are adopted and followed and is the point of contact for dealings with authorities. Such entities are also required to maintain client identification and verification procedures and adopt a risk-based approach to monitoring financial activities, including appropriate record-keeping procedures and risk identification in relation to persons, countries, activities and sanctions lists and internal reporting procedures and money laundering training. The AML Regulations describe the exact nature of these requirements in detail and the form that the procedures should take.

Failure to comply with the requirements of the AML Regulations constitutes an offence punishable on summary conviction to a fine of five hundred thousand dollars or indictment to imprisonment for two years and a fine. Where an offence is committed by a company or partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary, partner or controlling member, such person shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly, in addition to the company or partnership.

Confiscation, forfeiture and civil recovery procedures are all set out in detail in the PCA, permitting authorities to seize the proceeds and tools of criminal conduct.

Cayman has also engaged in a number of tax information exchange agreements with OECD member states which provide for international co-operation with respect to tax information. Full particulars of these agreements are available upon request.

5.8. Other Cayman acts

Cayman, being a British colony, has inherited English common law but there are significant differences between the statutory acts of the two countries. Cayman law concerning banking transactions and arrangements is therefore similar to English law but is not identical. The same is true of the law relating to trusts.

APPENDIX A - LOCALLY INCORPORATED COMPANY

List of information and documents required for the incorporation and licensing process

1. The Proposed Name:

This must be approved by both the Registrar of Companies and CIMA. The name of an exempted company need not end with “limited”.

2. Ordinary or Exempted:

For explanation see our publication entitled “Cayman Islands Exempted Companies”.

3. The Proposed Location of the Registered Office in Cayman:

This firm can provide the registered office facility, if required. If a class “A” banking institution will be providing the authorised agent facility, the same institution could also provide the registered office facility.

4. Any Particular Requirements for the Incorporation Documents (Memorandum and Articles of Association):

We can provide standard form documents but these may well need to be tailored to the requirements of the particular case.

5. Authorised Share Capital:

As regards the authorised share capital the required details are amount, currency, par value (if any), division into different classes (if any) and class rights.

6. Issued Share Capital:

Details of number of shares to be issued, at what price and terms and to whom.

7. Details of Proposed Individual Shareholders, Directors and Officers:

For each shareholder (being a natural person) holding more than ten percent of the issued share capital or total voting rights, or for each individual “controller” (see below) and for each director, manager and officer the following must be provided to CIMA:

- (a) full names, addresses and nationality;
- (b) a complete personal questionnaire in the prescribed form;
- (c) two character references normally from a judge, lawyer, banker or person of similar status;
- (d) one financial reference verifying good financial standing;
- (e) a police clearance certificate from the individual’s place of residence confirming no record of criminal conviction; if the police authorities will not issue such certificates, the individual should swear an affidavit to the effect that he or she has not been convicted of a serious crime or any offence involving dishonesty;
- (f) unless apparent from item (b) above, evidence of appropriate professional banking or trust knowledge and experience. CIMA must be given the names of at least two of the directors

who will be actively engaged in the applicant's business, at least one of whom must possess a sound professional knowledge of, and experience in, the banking or trust business, as the case may be.

An individual is regarded as a controller of a licensee if (i) he is entitled to exercise 15% or more of the voting rights in the licensee or its ultimate or intermediate parent company, or (ii) the directors of the licensee or its ultimate or intermediate parent company are accustomed to act in accordance with his, directions or instructions.

8. Details of Proposed Corporate Shareholders:

CIMA must be given details of the name, address (principal office) and country of incorporation of all corporate shareholders holding more than 10% of the issued share capital or total voting rights. Copies of the annual financial statements of all such corporate shareholders for the two preceding years must also be given. In the case of a corporate shareholder that is in turn controlled by another corporation, two years financial statements will also be required for the controlling corporation.

9. References on the Parent Institution:

CIMA may require business references on the parent institution from two other banking or trust institutions.

10. Evidence of Non-Objection by Other Regulatory Authorities:

Assuming that the parent institution is a banking or trust institution in another country, CIMA will require evidence (normally in the form of a letter of approval) that the regulatory authority there has no objection to the Cayman application. If possible, the letter of approval should also confirm the good standing of the parent institution.

11. Business Plan:

A written business plan must be submitted to CIMA explaining the reasons for seeking a licence and the proposed activities. The content and required detail of the business plan depend to some extent on the nature of the applicant and the proposed operations of Cayman subsidiary, but in general the business plan should include:-

- (a) a statement of the business aims and the reasons for seeking a licence in Cayman;
- (b) financial projections for the next two years;
- (c) particulars of management structure and personnel;
- (d) details of the anticipated customer base (e.g. corporate, private, related party; geographical distribution, etc.);
- (e) asset structure (loan portfolio, investment policy, liquidity guidelines, etc.)
- (f) off-balance sheet and fee-earning activities;
- (g) if the applicant has already been incorporated and has commenced business, a copy of its most recent financial statements.

12. Principal Office, Branches and Subsidiaries:

CIMA must be given the address of the proposed principal office in Cayman. If there is to be no staffed operation in Cayman, the principal office will be that of the authorised agent; and CIMA must also be notified of the principal office outside Cayman. Any proposed subsidiary, branch, agency or representative office should also be mentioned so that the required approval may be given. In the case of subsidiaries the proposed capitalisation must be disclosed.

13. Authorised Agents:

These would normally be two Cayman-resident directors or officers or, if there will be none, a class “A” banking institution (or two named officers of such an institution). The appointment may be by letter addressed to the institution or persons appointed.

14. Auditors:

Local auditors must be appointed.

15. Proposed Date of Financial Year-End

A statement giving the date for the drawing up of the annual accounts.

16. Exemptions:

If exemption is needed from any of the statutory requirements (e.g. the requirement to obtain prior approval for changes in the directors and senior officers and for share dealings) such exemption should be applied for at the same time as the licence.

17. Parent Company Comfort Letter Concerning Liabilities:

CIMA may require a comfort letter as to the intention of the parent company that the licensee will at all times be in a position to meet its liabilities as they fall due. A guarantee is not required.

18. Undertakings:

The appropriate undertakings must be given according to the category of licence:

- (a) for a “B” banking licence the undertaking not to solicit or receive funds from residents of Cayman;
- (b) for a restricted “B” banking licence the additional undertaking not to solicit or receive funds save from the listed persons;
- (c) for a restricted trust licence the undertaking not to undertake trust business other than for the listed persons.

19. Application Fee:

At the time of application the prescribed application fee (available on request) must be paid. This is not refundable but is credited towards the licence fee payable upon grant of the licence.

NOTE: References and undertakings, though given to us for filing purposes, must be addressed in all cases to:

The Managing Director
Cayman Islands Monetary Authority
P.O. Box 10052 KY1-1001
SIX Cricket Square,
Grand Cayman,
Cayman Islands, B.W.I.

APPENDIX B - BRANCH OF A FOREIGN COMPANY

List of information and documents required for the registration and licensing processes

1. Incorporation Documents:

Three copies of the incorporation documents (Certificate of Incorporation and Memorandum and Articles of Association or Charter and Bylaws, etc.) of the applicant duly certified under the public seal of the place (country, city or state) of incorporation and verified by a statutory declaration made by one of its directors or secretary. If any of these is not written in English, a certified English translation.

2. Details of Individual Shareholders, Directors and Officers:

Three copies of a list of the directors and officers (e.g. chairman, president and secretary) duly certified by the secretary containing names, residential addresses and nationalities.

For each shareholder (being a natural person) holding more than ten percent of the issued share capital or total voting rights, or for each individual “controller” (see below) and for each director, manager and officer the following must be provided to CIMA:

- (a) full names, addresses and nationality;
- (b) a complete personal questionnaire in the prescribed form;
- (c) two character references - normally from a judge, lawyer, banker or person of similar status;
- (d) one financial reference verifying good financial standing;
- (e) a police clearance certificate from the individual's place of residence confirming no record of criminal conviction; if the police authorities will not issue such certificates, the individual should swear an affidavit to the effect that he or she has not been convicted of a serious crime or any offence involving dishonesty;
- (f) unless apparent from item (b) above, evidence of appropriate professional banking or trust knowledge and experience. CIMA must be given the names of at least two of the directors who will be actively engaged in the applicant's business, at least one of whom must possess a sound professional knowledge of, and experience in, the banking or trust business, as the case may be.

An individual is regarded as a controller of a licensee if (i) he is entitled to exercise 15% or more of the voting rights in the licensee or its ultimate or intermediate parent company, or (ii) the directors of the licensee or its ultimate or intermediate parent company are accustomed to act in accordance with his directions or instructions.

3. Details of Corporate Shareholders:

CIMA must be given details of the name, address and country of incorporation of all corporate shareholders holding more than 10% of the issued share capital or total voting rights. Copies of the annual financial statements of all such corporate shareholders for the two preceding years must also be

given. In the case of a corporate shareholder that is in turn controlled by another corporation, two years financial statements will also be required for the controlling corporation.

4. Agents for Service of Process:

The Companies Act requires that at least one person resident in Cayman be appointed to accept on behalf of the foreign company service of process and any notices required to be served on it. The appointment may be by letter addressed to the person or persons appointed.

5. President's Letter:

A letter addressed to His Excellency, The Governor of Cayman, from the president or chairman of the applicant containing:

- (a) a statement describing in outline the history of the applicant and its present business activities;
- (b) a brief description of the applicant's subsidiaries and affiliates;
- (c) the reasons for wishing to obtain the licence sought and the business aims of Cayman branch;
- (d) details of the professional knowledge and experience in banking or trust business (as the case may be) of the directors and officers;
- (e) confirmation that none of the directors or officers has been convicted of any serious crime or any offence involving dishonesty;
- (f) confirmation that the applicant and its holding company (if any) concur in the making of the licence application;
- (g) a request for any exemption from the requirements of the law;
- (h) confirmation that the applicant has a fully paid up capital in excess of Cayman requirements, including brief details of how the capital has been constituted and paid up.

If the applicant has a holding company, the confirmation on its behalf under paragraph (f) above should be given by the president or chairman of the parent organisation.

6. Group Chart:

A chart showing the relationship of the applicant to its subsidiaries, affiliates and holding company, if any.

7. References:

CIMA may require business references on the applicant from two other banks or trust companies, as the case may be.

8. Evidence of Non-Objection by Other Regulatory Authorities:

CIMA will require evidence (normally in the form of a letter of approval) that the regulatory authority in the home country has no objection to the Cayman application. If possible, the letter of approval should also confirm good standing.

9. Principal Place of Business in Cayman:

CIMA must be given the address of the proposed principal office in Cayman. If there is to be no staffed operation in Cayman, the principal office will be that of the authorised agent; and CIMA must also be notified of the principal office outside Cayman.

10. Authorised Agents:

These would normally be two Cayman-resident directors or officers or, if there will be none, a class “A” banking institution, (or two named officers of such an institution). The appointment may be by letter addressed to the institution or persons appointed.

11. Auditors:

The name and address of the auditors. Local auditors are not required.

12. Financial Year-End:

A statement giving the date for the drawing up of the annual accounts.

13. Financial Statements:

CIMA will require a copy of the applicant’s latest annual financial statements (including comparative figures for the previous year) and those of its holding company, if any.

14. Exemptions:

If exemption is needed from any of the statutory requirements (e.g. the requirement to obtain prior approval for changes in the directors and senior officers and for share dealing), such exemption should be applied for at the same time as the licence.

15. Statement Confirming Responsibility for Branch Obligations:

This statement must usually be given by the parent company under the corporate seal, if any, and be authenticated by a notary public.

16. Undertakings:

The appropriate undertakings must be given according to the category of licence:

- (a) for a “B” banking licence the undertaking not to solicit or receive funds from residents of Cayman;
- (b) for a restricted “B” banking licence the additional undertaking not to solicit or receive funds save from the listed persons;
- (c) for a restricted trust licence the undertaking not to undertake trust business other than for the listed persons.

17. Application Fee:

At the time of application the prescribed application fee (available on request) must be paid. This is not refundable but is credited towards the licence fee payable upon grant of the licence.

NOTE: References and undertakings, though given to us for filing purposes, must be addressed in all cases to:

The Managing Director

Cayman Islands Monetary Authority

P.O. Box 10052 KY1-1001

SIX Cricket Square,

Grand Cayman,

Cayman Islands, B.W.I.

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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