COLLAS CRILL

Guide to the Securities and Investment Business Act - Registered Person and SIBA Licence

MARCH 2025

Licensing background

The Securities and Investment Business Act (SIBA) applies to all entities organised or established in the Cayman Islands and which are engaged in the course of securities investment business, whether or not that business is actually carried out in or from the Cayman Islands.

The following examples of service providers carrying on securities investment business from a place of business in the Cayman Islands, should expect to be required to apply for registration or a licence (unless qualifying for an exemption):

- investment manager
- investment advisers
- market makers
- broker/dealers
- market intermediaries.

Under the SIBA 'securities investment business' includes:

- dealing in securities as an agent or, where the relevant person holds himself out as dealing in securities for other persons, as principal;
- arranging deals in securities with a view to another person dealing in securities;
- participating in the arrangements for dealing in securities;
- discretionary management of securities belonging to another person;
- advising a person on securities if:
  - the advice is given to that person in their capacity as an investor or as an agent for an investor; and
  - the advice is on the merits of dealing in the security or of exercising a right conferred by a security to deal in securities;
- managing or marketing an EU Connected Fund; or
- acting as a depositary for an EU Connected Fund.

Definitions

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

For the purpose of the foregoing, and the SIBA generally:

'Dealing in securities' means buying, selling, subscribing for, or underwriting securities as agent or principal, including market maker activity;

'Securities' are widely defined to include shares, partnership interests, trust units, debt instruments, warrants, options, futures, contracts for differences and certain virtual assets.

'Arranging deals in securities' means making arrangements with a view to another person (whether as principal or agent) buying, selling, subscribing for or underwriting securities.

'Managing securities' means managing securities belonging to another person in circumstances involving the exercise of discretion.

'Advising on securities' means advising an investor or potential investor (including acting as an agent on behalf of an investor) on buying, selling, underwriting, subscribing for or exercising any right conferred by a security.

The SIBA applies only to persons that engage in the above activities in the course of business i.e. persons who provide services for profit or reward.

License or registration?

The default position under SIBA is that an in-scope person carrying on or purporting to carry on securities investment business must be licensed with the Cayman Islands Monetary Authority (CIMA) and hold a Securities Investment Business Licence (Licence).

However, the following persons do not need to be licensed, and instead are required to register with CIMA as registered persons, which entails a lower degree of regulatory oversight (Registered Persons):

- companies that carry on securities investment business exclusively for one or more companies within the same group;
- persons who carry on securities investment business exclusively for:
  - sophisticated persons [1] or high net worth persons [2]; and/or
  - companies, partnerships or trusts (whether or not regulated as a mutual fund) of which the shareholders, limited partners or unitholders are sophisticated persons or high net worth persons; and
  - who have a registered office or a place of business in the Cayman Islands for which services are provided by a person licensed to provide such services; and
- persons who would be required to be licensed under SIBA, but who are regulated in relation to securities investment business by a recognised overseas regulatory authority in the country where that business is conducted.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

Exclusion from licensing and registration

The SIBA specifies persons who may conduct securities investment business without a licence. Non-registrable persons do not need a license nor do they need to register with CIMA. Non-registrable persons are:

- a relevant person being part of a joint enterprise where the other person carries on securities investment business and such business is carried on for the purpose of the joint enterprise;
- certain Government or statutory bodies or public authorities;
- a relevant person carrying on securities investment business only in the course of acting in any of the following capacities: director, partner (including general partners), LLC manager, liquidator, trustee in bankruptcy, receiver of an estate or company (including an LLC), executor or administrator of an estate, or a trustee acting together with co-trustees in their capacity as such, or acting for a beneficiary under the trust, provided that in each case that person is not separately remunerated for any of the activities which constitute the carrying on of such securities investment business other than as part of any remuneration the person receives for acting in that capacity and either:
  - as a necessary or incidental part of performing functions in that capacity; or
  - is acting on behalf of a company, partnership or trust that is otherwise licensed or registered under SIBA.

If no exemption applies, then a person will either need to obtain a licence from CIMA or register with CIMA as a 'Registered Person'.

Registered Persons do not need a full licence but must file a registration application with CIMA before starting business. Registered Persons have been defined above.

Continuing compliance

For SIBA Licensees and Registered Persons, the relevant CIMA-published rules and statements of guidance indicate that such entities have the following policies and procedures in place to ensure that they are operating in compliance with applicable laws and regulations in the Cayman Islands:

- AML / countering the financing of terrorism / countering proliferation financing
- corporate governance
- cybersecurity
- international financial sanctions
- internal controls
- nature, accessibility and retention of records
- outsourcing
- succession planning.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

Such policies and procedures are routinely requested for review by CIMA.

Application process for registration as registered person

In order to register, a completed application must be submitted to CIMA via an online portal, together with the registration fee and any other information requested by CIMA.

Registration is subject to the applicant:

- being in good standing
- having a minimum of two directors (or one corporate director)
- having directors, senior officers and shareholders who are deemed by CIMA to be fit and proper persons; and
- having directors in good standing that are currently registered or licensed in accordance with the Director Registration and Licensing Act (as amended, the DRLA).

Applicants will also be required to provide details of their anti-money laundering (AML) compliance and reporting officers (see below).

CIMA fees for registration as a Registered Person

- **Application fee** US$7,317.07
- **Annual fee** US$7,317.07

The application fee is not pro-rated for the calendar year and the annual fees are payable by 15 January each year.

Continuing obligations for registered persons

- Registered Persons must notify CIMA of any material changes in the information filed with CIMA within 21 days, including any issue or transfer of the legal or beneficial interest in the shares or interests of the Registered Person.
- Registered Persons must have a minimum of two directors, partners, managers or managing members (as applicable) and, where the registered person is a Cayman company or LLC, at least two directors or managers must be registered or licensed in accordance with the DRLA.
- Registered Persons must separately account for the funds and property of each client and their own funds and property.
- Registered Persons are required to maintain AML/CFT procedures, systems and controls. The requirements include (amongst others) procedures for conducting customer due diligence, record-keeping, suspicious activity reporting and ongoing monitoring and testing of systems for compliance with the AML/CFT regime. Registered Persons are also under an obligation to appoint AML officers.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

- Registered persons are required to file an annual declaration and pay an annual fee of US$6,100 on or before 15 January in each year following the year of registration. Failure to pay the annual fee will result in a surcharge of one twelfth of the fee for every month that the fee is not paid.
- Any person licensed or registered under the Act must comply with the applicable CIMA regulatory measures, which can provide further advice on. These include, amongst others, those relating to corporate governance, outsourcing, retention of records, cybersecurity and internal controls.

Application process for SIBA licence

A person who wishes to carry on securities investment business must apply to CIMA for the grant of a licence.

The application process involves completing an electronic application form and submitting it to CIMA together with the supporting documentation and application fee.

The required information and supporting documentation are as follows:

- cover letter;
- details of securities experience and securities qualifications for key personnel;
- copy of the memorandum and articles of association, or other instrument constituting and defining the constitution of the applicant;
- detailed business plan;
- organizational structure chart;
- group structure chart;
- outline of the major sources of group's income;
- details of any sub-contracting arrangement;
- list of companies with whom the applicant has or intends to have agency agreements;
- systems and controls information;
- information regarding the arrangements made to ensure the safety of client interest in the event of death, incapacity, holidays and illness;
- auditor letter of consent;
- For each and every natural persons listed in the application form, all of the following:
  - personal questionnaire
  - two character references
  - one reference verifying good financial standing; and
  - a police clearance certificate

- For each and every corporate shareholder listed in the application form, either:

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

  - a personal questionnaire(s) for the beneficial owners(s); and
  - audited accounts; or
  - evidence that it is traded on a recognised exchange

- audited accounts; and
- evidence of professional indemnity insurance.

Applicants will also be required to provide details of their anti-money laundering (AML) compliance and reporting officers (see below).

Additionally, every applicant for a licence may undergo a brief on-site inspection.

CIMA fees

SIBA licence fees depend on the regulated activity of the licensee e.g. investment manager, broker etc.

The application fee is not pro-rated for the calendar year, and the annual fees are payable by 15 January each year. Further information on the current fee schedule for all CIMA-regulated entities is available here.

Securities reporting requirements for licensees

Entities that are licenced have an obligation to submit the following to CIMA:

- Audited accounts annually, within six months of the licensee's financial year end.
- A Certificate of Compliance certifying that the licensee has complied with the provisions of the act and any underlying regulations. This must be submitted at the same time as the audited accounts.
- Notification of any changes in the information required at the time of licensing, within seven days of such changes occurring.
- Auditor's opinion on the internal controls of the licensee, at the same time as the audited accounts.
- Financial reporting statements - In the case of a licenced Broker-Dealer, a monthly statement, and, in the case of all other licenced entities, a quarterly statement. Licensees must submit these within 15 business days of the end of the month or quarter.
- Annual reconciliation between balance sheet figures on the audited accounts and monthly/quarterly reporting statement prepared at the same date, and an explanation of any differences, and at the same time as the audited accounts.
- Current Details of Insurance annually, prior to renewal of the licensee's securities investment business licence; and
- Other Notification - Licensees should also be familiar with, and adhere to, the notification requirements under the Conduct of Business Regulations of the Cayman Islands.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

[1] This term is defined in SIBA and includes certain regulated persons and those persons who, due to their knowledge and experience, are regarded as being capable of evaluating proposed transactions and where the minimum single transaction value is US$100,000 or its equivalent in any other currency.

[2] This term is defined in SIBA and means (a) an individual whose net worth is US$1,000,000 or its equivalent in any other currency or (b) any person with total assets of not less than US$5,000,000 or its equivalent in any other currency.

Contact

Collas Crill is committed to helping you navigate the regulatory requirements and registration. If you require further information or assistance regarding your mutual funds analysis and registration requirements, please contact a member of the team on the right hand side of this page.

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.

COLLAS CRILL

For more information please contact:

Juliana Wood

Senior Associate | Cayman

t: +1 345 914 9638 | **e:** juliana.wood@collascrill.com

Ian Clark

Counsel | BVI

t: +1 284 852 6347 | **e:** ian.clark@collascrill.com

This note is a summary of the subject and is provided for information only. It does not purport to give specific legal advice, and before acting, further advice should always be sought. Whilst every care has been taken in producing this note neither the author nor Collas Crill shall be liable for any errors, misprint or misinterpretation of any of the matters set out in it. All copyright in this material belongs to Collas Crill.