



Transparency and Directors Registration in the Cayman Islands



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THE CAYMAN ISLANDS MONETARY AUTHORITY (CIMA) undertook a public consultation during the course of 2012 on certain corporate governance proposals that were intended to enhance and clarify corporate governance standards and provide greater transparency in the financial services markets.

The proposals included a statement of guidance for operators of mutual funds, a public searchable database disclosing the names of the directors and the registered office address of all registered and licensed mutual funds and the registration and licensing of all directors of such funds. Some two years on this article takes a look at the developments which have been implemented in the Cayman Islands and what developments are expected to be implemented in order to enhance transparency regarding the directors of Cayman funds.

The statement of guidance for operators of mutual funds was issued in December 2013 and sets out useful and clear guidance for directors of Cayman registered and licensed mutual funds and for prospective and existing investors in those funds. The statement of guidance did not affect or seek to change existing Cayman law and it largely mirrors the judgment of Justice Jones delivered in the high profile Cayman Grand Court case of Weaving Macro Fixed Income Fund Limited (in liquidation) v Stefan Peterson and Hans Ekstrom.

The Directors Registration and Licensing Law, 2014 (the Law) which provides for the regulation of directors of certain entities in the Cayman Islands was published on 21 May 2014 and the majority of its provisions came into force on 4 June 2014. Under the Law all directors of regulated mutual funds and of entities which are registered as excluded persons pursuant to paragraphs 1 and 4 of schedule 4 of the Securities Business Law (Revised) (each referred to as “covered entities”) are required to apply to CIMA to be registered or licensed.

Regulated mutual funds are those registered with CIMA under s4(3), or licensed by CIMA under s4(1) of the Mutual Funds Law (Revised) and include registered master funds. Excluded persons under paragraphs 1 and 4 of schedule 4 of the Securities Business Law (Revised) (SIBL) are Cayman domiciled companies or partnerships or Cayman registered foreign companies (or entities which have established a place of business in Cayman) which provide securities investment business services (i) exclusively to sophisticated persons or high net worth persons or vehicles in which such persons invest or (ii) only on an intra-group basis. The Law does not apply to trustees regulated under the Banks and Trust Companies Law (Revised) or partners of partnerships.

The Law regulates three categories of directors: (i) registered directors, (ii)

professional directors and (iii) corporate directors. Registered directors are persons who hold the position of director on less than 20 covered entities. Professional directors are persons who hold 20 or more directorships on covered entities. Corporate Directors are any body corporate (wherever it is incorporated) which is appointed to act as a director of a covered entity.

The requirement to register as a director or be licensed as a professional or corporate director of a covered entity applies to both executive and non-executive directors, regardless of whether or not they reside in the Cayman Islands. Only relevant Cayman funds and relevant excluded persons will count toward the threshold number of Covered Entities to bring a director within the Professional Director definition. The Law is applicable to covered entities in “Licence Under Termination” status, where the directors are still appointed to the board, however, it is not applicable to covered entities which have appointed liquidators.

Individuals who act as directors of covered entities should already be registered or licensed. Corporate directors of covered entities who have acted in that capacity prior to the coming into effect of the Law will have until 4 December 2014 to obtain their license. Persons who have not previously acted as a director to a covered entity and who would like to be appointed as such will need to be registered or licensed, as applicable, prior to their appointment.



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Individual directors will not be registered or licensed automatically following application. CIMA may refuse to register an applicant if they have information that the applicant has been convicted of a criminal offence involving fraud or dishonesty or is the subject of an adverse finding, financial penalty, sanction or disciplinary action by a regulator, self-regulatory organisation or a professional disciplinary body. CIMA will not grant a license to a director unless it is satisfied that the applicant is a fit and proper person for such licensing.

To determine whether or not a person is fit and proper, regard shall be had to all the circumstances including that person's (a) honesty, integrity and reputation; (b) competence and capability, and (c) financial soundness. CIMA may grant a license to a professional director or a corporate director with or without conditions attached. Any terms or conditions attached to the license must be adhered to in order to maintain it. The fitness and probity requirements apply not only to corporate directors but also to the members of their board.

Whilst not currently in force, the Law also contains provision that CIMA may not grant a license to a director unless it is satisfied that the applicant has sufficient capacity to carry out the duties of a professional or corporate director, as the case may be. Once these provisions are brought into force CIMA is also expected to examine the capacity of registered, professional and corporate directors to carry out their duties and to give directions where necessary.

For professional directors, there are limited circumstances where registration only is required under the Law as follows: (i) an individual director who is a director, employee, member, officer, partner or shareholder of an investment manager or adviser of a licensed or registered fund where that investment manager or adviser is registered or licensed by an approved

regulatory authority¹ and that person acts as a director of a covered entity by virtue of their relationship to that fund manager or adviser; and (ii) an individual director of a covered entity who is a director, an employee, a member, an officer, a partner or a shareholder of a holder of a companies management license or a mutual fund administrator license issued pursuant to the Companies Management Law (Revised) or the Mutual Funds Law (Revised).

One significant difference between registered directors and professional or corporate directors is the fact that registered directors are not required to take out a policy of insurance under the Law. Both professional and corporate directors must maintain a policy of insurance with an insurer which is licensed under Cayman's Insurance Law (Revised) or any other insurer acceptable to CIMA to cover loss potentially arising from claims in respect of civil liability incurred in connection with the business of that director. The insurance policy must have minimum aggregate cover of US\$1.22m for each and every claim.

If CIMA cancels or suspends registration, or revokes or suspends the license of a director of a covered entity details of that suspension or revocation will be made public through publication in the *Cayman Islands Gazette*.

¹ US Securities and Exchange Commission (SEC); US Commodity Futures Trading Commission (CFTC); US Financial Industry Regulatory Authority (FINRA); Hong Kong Securities and Futures Commission (SFC); Japan Financial Services Agency (FSA); Monetary Authority of Singapore (MAS); UK Financial Conduct Authority (FCA); German Federal Financial Supervisory Authority (BaFin); French Autorité des Marchés Financiers (France) (AMF); Netherlands Authority for the Financial Markets (Autoriteit Financiële Markten, AFM); The Central Bank of Ireland (CBI); Luxembourg Commission de Surveillance du Secteur Financier (CSSF); Dubai Financial Services Authority (DFSA); Brazilian Comissão de Valores Mobiliários (CVM)

CIMA will maintain a database of Registered, Professional and Corporate Directors (the Database), however, this database will not initially be a publically available document and will be protected from freedom of information requests. It is proposed that CIMA will provide a facility for the public to search the Database to determine whether a director is registered or licenced in accordance with the Law. It is expected that the results of any search for a director's licence or registration status will only show the director's name, the type of registration or licence held, the registration/licence number and the date on which licence or registration was issued.

The Law therefore serves to provide CIMA with additional teeth for the proper regulation of directors of covered entities and provides investors in those entities with reassurance that their directors are subject to the oversight of the Cayman regulator. Investors can also take comfort that where professional director or corporate directors have been appointed to their funds, the necessary insurance required under the Law will be in place.

Investors can add to their pre-investment due diligence a review of the *Cayman Islands Gazette* for details of any directors who have had their registration suspended or their license suspended or revoked. In time it is expected that CIMA will undertake a review of the capacity of each director of a covered entity to ensure that they have sufficient time to discharge their duties appropriately for each of the funds in respect of which they have been appointed. It is also expected that CIMA will produce a publicly searchable database giving access to information on all directors who are subject to registration and licensing under the Law.

Whilst the Cayman Islands are still in the process of enhancing transparency of information relating to the directors of covered entities significant steps have been taken to increase transparency and investor protection for Cayman funds. ■

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