

# Form ADV Amendments for Non-U.S. Sponsors in Light of Re-Registration Requirement under the Securities Investment Business Law of the Cayman Islands

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On June 18, 2019, the Securities Investment Business (Amendment) Law, 2019 (the “**Amendment Law**”) entered into force in the Cayman Islands, significantly amending the Securities Investment Business Law (2019 Revision) (“**SIBL**”), including by requiring non-U.S. sponsors with Cayman Islands fund managers or investment advisers to re-register such entities with the Cayman Islands Monetary Authority (“**CIMA**”).<sup>[1]</sup> Further, non-U.S. sponsors that have made Form ADV filings with the U.S. Securities and Exchange Commission (the “**SEC**”) should promptly consider whether to update the disclosures in their Form ADV filings. To elaborate:

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- The Amendment Law affects persons registered as “excluded persons” under SIBL (“**Excluded Persons**”). Excluded Persons include entities incorporated or registered in the Cayman Islands that carry on “securities investment business” (as defined under SIBL) but satisfy the requirements for one of the exemptions set out in SIBL from the need to obtain a full license under SIBL.<sup>[2]</sup> Prior to the enactment of the Amendment Law, non-U.S. fund sponsors that operate fund manager or investment adviser entities in the Cayman Islands typically registered such managers/advisers as Excluded Persons.
- Under SIBL before the Amendment Law, Excluded Persons were required only to register as “excluded persons” with CIMA but not to obtain a full license. Under SIBL as amended by the Amendment Law (the “**Amended SIBL**”), subject to certain limited exceptions, Cayman Islands fund managers and investment advisers currently registered as Excluded Persons will have to apply to CIMA for registration as “registered persons” under the Amended SIBL (“**Registered Persons**”).<sup>[3]</sup> The deadline to re-register with CIMA as a Registered Person is January 15, 2020.<sup>[4]</sup>
- Non-U.S. sponsors with Cayman Islands fund managers or investment advisers required to re-register as Registered Persons need to consider the implications on the disclosures in their Form ADV filings with the SEC under the U.S. Investment Advisers Act of 1940, as amended. **In particular, a fund manager or investment adviser that has indicated in its response to Item 1.M of Form ADV that it is not registered with a foreign financial regulatory authority should consider changing the response to indicate that it has become registered with a foreign financial regulatory authority (i.e., CIMA) since the ADV filer will become subject to additional regulatory supervision and oversight following its re-registration as a Registered Person.**

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- Changing this response requires a Form ADV amendment to be filed “promptly” after the change has occurred. Therefore, Form ADV amendments should be filed upon CIMA approval of the filing to become a Registered Person under the Amended SIBL, rather than waiting until the next annual Form ADV update.

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[1] It is worth noting that only Cayman Islands “fund managers” are required in addition to comply with the Cayman Islands International Tax Co-operation (Economic Substance) Law, 2018 (the “**Economic Substance Law**”). “Fund managers” are persons “managing securities belonging to another person in circumstances involving the exercise of discretion” within the meaning of Schedule 2 of SIBL, as amended by the Amendment Law, that are within SIBL’s ambit. A discussion of the implications of the Economic Substance Law on fund managers falls outside of the scope of this briefing.

[2] The most common of the six exemptions from having to obtain a full license under SIBL (which are set out in Schedule 4 of SIBL) is for persons that carry on “securities investment business” for (a) a “sophisticated person” (as defined in SIBL), (b) a “high net worth person” (as defined in SIBL) or (c) a company, partnership or trust (whether or not regulated in the Cayman Islands as a mutual fund) of which the shareholders, unit holders or limited partners are one or more persons falling within (a) or (b).

[3] Under the Amended SIBL, Registered Persons will be subject to additional supervision and inspection by CIMA that previously applied only to those entities that were fully licensed under SIBL (“**Licensees**”) but not to Excluded Persons under SIBL (e.g., obtaining CIMA approval before commencing securities investment business). However, Registered Persons will not be subject to the full scope of CIMA supervision and oversight as Licensees and will not be required to comply with certain regulations under the Amended SIBL.

[4] The registration process for Registered Persons is currently taking about 10 weeks (and may take longer if the documents submitted as part of the registration application are defective or if CIMA chooses to ask questions). Applicants must allow sufficient time for this registration process when considering when to hold the first closing of the related fund (assuming the applicant is required to provide services to the fund immediately following the first closing).

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The following Gibson Dunn lawyers assisted in preparing this client update: John Fadely and Albert Cho.

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any of the following leaders and members of the firm’s Investment Funds practice group:

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