

Licensing and ongoing requirements of banks in the Cayman Islands

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This note provides a summary of the types of banking licences available in the Cayman Islands together with an outline of the initial and on-going licensing requirements.

The advantages of banking in the Cayman Islands include tax neutrality, asset protection, an effective and balanced regulation regime based on international standards and political and economic stability. Establishing a bank or placing assets in the Cayman Islands enables banks to have the best opportunity to maximise the potential of their assets and gives them access to international financial markets.

The Cayman Islands Monetary Authority (**CIMA**) is responsible for the licensing and regulation of financial service providers in the Cayman Islands. CIMA is responsible for both the processing of bank applications and the continuing supervision of bank licensees.

According to the most recent statistics published by CIMA, as of March 31 2024, there were 11 Class A banks and 75 Class B banks licenced by CIMA in the Cayman Islands. The majority of the 75 Class B banks are Cayman Islands branches of foreign banks.

| Types of banking licence

"Banking business" is defined by the Banks and Trust Companies Act (Revised) (**BTC Act**) as 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".

There are four classes of banking licences:

Class A licence - unrestricted licence

This class of licence permits the holder to carry on local and overseas banking business and is usually only available to a branch or affiliate of a major international bank. The applicant must maintain a fully staffed office in the Cayman Islands with personnel who are experienced in local and international banking operations.

Class A licence - restricted licence

This is a restricted form of the above Class A licence and imposes restrictions as to the carrying on of banking business within the Cayman Islands. This licence may also include permission to provide principal office services (ie the provision of a place of business, including resources, staff, facilities, books and records) to other licensees (permission can be granted for either five or more licensees or less than five licensees). This licence may also include permission to provide "private banking services" (ie banking business conducted with persons of a high net worth of over CI \$800,000 (approximately US \$1,000,000) or such amount as may be determined by CIMA) to residents of the Cayman Islands.

Class B licence - unrestricted licence

This is the most common Cayman bank licence and permits the holder to carry on offshore banking business with overseas clients (ie non-Cayman Islands residents). Business may be carried on in the Cayman Islands for clients from outside the Cayman Islands.

The holder of a Class B licence may not:

- take deposits from any person resident in the Cayman Islands, other than another licensee, or an exempted or ordinary non-resident company which is not carrying on business in the Cayman Islands
- invest in any asset which represents a claim on any person resident in the Cayman Islands, except a claim resulting from:
 - a loan to an exempted or ordinary non-resident company not carrying on business in the Cayman Islands
 - 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 (Transition) Act (Revised) for the purchase or construction of a residence in the Cayman Islands to be owner occupied
 - a transaction with another licensee
 - the purchase of bonds or other securities issued by the Cayman Islands Government, a body incorporated by statute, or a company in which the Cayman Islands Government is the sole or majority beneficial owner

- without the written approval of CIMA, carry on any business in the Cayman Islands other than the one for which the Class B licence has been obtained (ie the holder must carry on its business in accordance with the business plan filed with CIMA on its application for its licence, as that business plan may be subsequently amended with CIMA's approval).

Class B licence - restricted licence

This is a restricted form of the above Class B licence and incorporates a further restriction that the licensee shall not receive or solicit funds by way of trade or business other than from certain named and approved non-resident clients. Generally, such client base should be limited to related parties and should not exceed 20 clients. This type of licence is normally used for an in-house bank either to provide intra-group treasury services or to administer a family banking business.

Type of company

In the case of a branch operation, the existing overseas bank must be registered under the Companies Act (Revised) (**Companies Act**) as a foreign company with a place of business in the Cayman Islands. There is a prescribed procedure requiring, amongst other things, copies of corporate documents and names and addresses of directors to be submitted to the Cayman Islands Registrar of Companies (the **Registrar**). In other cases, a Cayman Islands company is incorporated as an exempted, ordinary non-resident or ordinary company.

An ordinary company should be used in the case of a Class A banking licence, as such a company is permitted to carry on local business. An ordinary company must, unless it is licensed under certain other acts (such as the BTC Act), be at least 60% Caymanian owned and controlled or licensed under the Local Companies (Control) Act (Revised).

For a Class B banking licence where a branch operation is not contemplated, it is preferable to use an exempted company. An exempted company is the most common offshore company in the Cayman Islands. A company may apply to be registered as exempted if its objects are to be carried out mainly outside the Cayman Islands. An exempted company may not trade in the Cayman Islands with any person, firm or corporation except in furtherance of the business of the exempted company carried on outside the Cayman Islands, nor may an exempted company own land in the Cayman Islands without the consent of the Financial Secretary. It should be noted that these restrictions do not prevent an exempted company effecting and concluding contracts in the Cayman Islands and exercising in the Cayman Islands all of its powers necessary for the carrying on of its business outside the Cayman Islands.

Licensing policy restrictions and requirements

Supervisory authority approval - new licences

Where the applicant is a branch or subsidiary of a bank established and licensed in another jurisdiction, a banking licence will not be granted unless the supervisory authority in that jurisdiction confirms:

- that it has no objection to the establishment of the Cayman Islands branch or subsidiary
- that the applicant will be included in the consolidated supervision of the parent entity
- that there are no regulatory concerns with respect to the parent entity or its management
- the frequency and scope of on-site examinations conducted by the home regulator and the date of the bank's most recent examination
- details of any restrictions on cooperating and sharing information with the Cayman Islands, including but not limited to, the assessment, resolution or recovery of financial institutions that fall under its consolidated supervision
- that the prudential and operational framework of the home regulator assesses such risk areas including corporate governance, capital adequacy, large exposures, related party exposures and liquidity.

Capitalisation

For new unrestricted banking licences the initial paid-up capital must be at least CI \$400,000 (approximately US \$500,000) or its equivalent in another currency. The minimum capital requirement for restricted licences is CI \$20,000 (approximately US \$25,000). However, higher figures may be required by CIMA depending on the nature and scope of the proposed operation.

Ownership

The issue, transfer, dealing or disposal of shares of a licensed bank (and of most other licensees under the regulatory laws of the Cayman Islands) is prohibited without CIMA's prior approval. This includes a change in direct and indirect beneficial ownership of a licensee. CIMA has a regulatory policy specifying to the criteria for approving changes in ownership and control.

However, a licensee may be exempted from this requirement for prior consent if its shares (or its shares of its parent company) are publicly traded on a stock exchange approved by CIMA. Any such exemption is subject to conditions placed on the licensee and would include the licensee, as soon as reasonably practicable: (a) notifying CIMA of any change of control of the licensee, any acquisition by a person or group of persons of shares representing more than 10% of the issued share capital or total voting rights of the licensee or its parent company (or ultimate

parent company, if applicable); and (b) providing CIMA with such information, within such period of time as CIMA may require, to enable CIMA to assess whether each of the transferees of the shares is a fit and proper person to have control of the licensee, or ownership of the shares.

Directors and senior officers

The BTC Act provides that a licensee shall at no time have less than two directors. Generally, CIMA will require each director to have a minimum of five years relevant experience at a senior level. At the time of licensing, CIMA requires that all directors and senior officers meet a fit and proper persons assessment and there is a similar requirement in connection with the subsequent appointment of any additional directors or other senior officers. Licensees must apply to CIMA for its prior written approval of all director and senior officer appointments, although a licensee may apply to CIMA for an exemption from this requirement.

Section 3 of the BTC Act lists the criteria that CIMA will look at when assessing the fitness and propriety of persons to be appointed as directors and senior officers. These are:

- honesty, integrity and reputation
- competence and capability
- financial soundness.

CIMA's Regulatory Procedure - Assessing Fitness and Propriety sets out the procedure followed by CIMA to assess the fitness and propriety of persons who have applied to perform a controlled function (which includes a person who has applied to be a director, senior officer, manager or officer of a licensed bank). In addition, CIMA has published a Regulatory Policy – Fitness and Propriety that sets out the criteria CIMA uses to determine whether persons are fit and proper to perform a controlled function.

Any proposed directors and/or senior officers who are to be appointed to a licensee will need to complete a CIMA personal questionnaire and will need to provide CIMA with a resume, a notarised evidence of identity (eg a photograph page of a passport), at least two character references, one financial reference and a police clearance certificate or affidavit of no convictions.

Authorised agents

A licensee is either required to (a) maintain a place of business in the Cayman Islands and have two individuals resident in the Cayman Islands to be its agents; or (b) if a licensee does not maintain its own local staffed office, it must have its registered office situated at a Class A bank or trust company and the authorised agents should be employees of such bank or trust company.

Banking names

Care should be taken in the adoption of a proposed name. The Registrar will refuse to incorporate any company whose name includes the words "bank" (or any similar word which in the Registrar's opinion suggests any such activities) without approval from CIMA (in accordance with section 30 of the Companies Act). In addition, as a general rule, a name will be unacceptable if it is shown to be the same as that used by another bank anywhere in the world, or if it so closely resembles another name as to cause confusion, whether deliberate or not. Equally unacceptable will be names which suggest a status or association which does not exist. A licensee may not change its name without prior approval from CIMA.

Auditors

A licensee is required to have its accounts audited annually. A copy of the audited accounts must be filed with CIMA within three months of the end of the licensee's financial year. Audited financial statements are not required to be made publicly available.

Where the licensee is a Cayman Islands company, the licensee's auditor must be a local auditor approved by CIMA. This requirement does not apply to Cayman Islands branches.

Supervisory issues

CIMA, acting through its Banking Supervision Division, has a statutory duty, under the Monetary Authority Act (Revised) to maintain a general review of banking practice in the Cayman Islands and to monitor the business of each licensee. CIMA's continuing supervision of licensed banks is based on off-site analysis and on-site inspections. CIMA conducts, among other things, analysis of regular audited and un-audited financial statements, meetings with management and periodic reports or examinations by auditors on specific areas of internal controls.

CIMA has a regulatory handbook, which includes its policies and procedures for carrying out its regulatory and co-operative functions, and has power, under the Monetary Authority Act (Revised), to issue rules (which are binding on licensees) and statements of guidance (which are not binding, but compliance with which is expected). Such rules and statements of guidance cover a range of operational matters (including, nature, accessibility and retention of records, business continuity management, outsourcing, cybersecurity, marketing, internal audit, corporate governance, internal controls and succession planning) and risk management standards (including risk management relating to country, credit, foreign exchange, interest rate, large exposures and liquidity). All banks licensed in the Cayman Islands are also subject to, and required to comply with, the provisions of the Proceeds of Crime Act (Revised), the Anti-Money Laundering Regulations (Revised) and Guidance Notes issued by CIMA in relation thereto.

Capital adequacy

CIMA has adopted the guidelines set by the Basel Committee for Bank Regulation and Supervisory Practices for the calculation of the capital adequacy ratio. The statutory minimum risk adjusted capital adequacy ratio for a bank incorporated in the Cayman Islands is 10%, but CIMA has the power to increase this. In practice, CIMA requires a minimum ratio of 12% for banks that are subsidiaries subject to consolidated supervision in another jurisdiction and 15% for banks which are not subject to such consolidated supervision. No separate minimum ratio is prescribed for Cayman Islands branches of banks regulated in another jurisdiction, but such banks are required to comply with the ratio prescribed by the regulators in their home jurisdictions.

Annual review

To complement the above reporting requirements, it is advisable that arrangements are made for a licensee's representatives to visit CIMA regularly to discuss the affairs of the licensee. In addition, authorised agents must ensure that their contact with their clients is such as to enable them to effectively perform the role of intermediary between CIMA and the licensee.

On-site inspections outside the Cayman Islands

CIMA may seek reimbursement for reasonable out-of-pocket expenses and related matters with respect to any on-site inspections outside the Cayman Islands. This will typically be more relevant to any Class B bank that is either a Cayman Islands branch or a subsidiary of a foreign bank.

Notification of changes in operations

Licences are issued to institutions on the basis that it is acceptable for them to carry on the type of business specified in the licence application. Any change in the scope or type of activity undertaken will require an amendment to the licensee's business plan and may necessitate a review of the status of the licence. Therefore, institutions should discuss matters with their legal counsel before embarking on any major shift in policy relating to their Cayman Islands operations.

Administrative fines regime

The Cayman Islands administrative fines regime (**Regime**) provides CIMA with significant powers to impose administrative fines on persons (entities and individuals) for breaches of the Anti-Money Laundering Regulations (Revised) or certain prescribed provisions of the regulatory acts (including the BTC Act) listed in the Monetary Authority Act (Revised) and certain associated regulations and rules.

Breaches are categorised under the Regime as minor, serious or very serious, as set out in Schedule 1 to the Monetary Authority (Administrative Fines) Regulations (Revised).

Read more information in our client briefing: [Cayman Islands administrative fines regime](#).

Economic substance

The International Tax-Co-operation (Economic Substance) Act (Revised) (**Economic Substance Act**) requires in-scope entities (**Relevant Entities**) that carry on particular activities (**Relevant Activities**) to have demonstrable economic substance in the Cayman Islands. Relevant Entities will include most Cayman exempted companies, LLCs, LLPs, registered foreign companies and partnerships including exempted limited partnerships, general partnerships, limited partnerships and foreign limited partnerships (there are certain exceptions for (a) investment funds or companies through which investment funds directly or indirectly invest or operate; (b) companies which are tax resident outside the Cayman Islands; and (c) companies which are authorised to carry on business locally in the Cayman Islands as a domestic company).

Relevant Activities include various forms of business activities including: banking business and financing and leasing business. Relevant Entities are required to satisfy the economic substance test in relation to any Relevant Activity as set out in the Economic Substance Act.

Accordingly, before applying for a licence under the BTC Act or making any change in business activities it is important that an analysis is undertaken to determine what the entity's classification, reporting requirements and substance requirements (if any) would be under the Economic Substance Act.

It would be a matter of the tax laws of the home jurisdiction, but a Cayman Islands branch of a foreign bank may fall outside the scope of the Economic Substance Act if it is considered tax resident in the home jurisdiction.

Read more information in our client briefing: [Cayman Islands economic substance requirements](#).

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