

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE SECURITIES INVESTMENT
BUSINESS LAW (2011 REVISION) TO MAKE PROVISION FOR THE
REGULATION OF ALTERNATIVE INVESTMENT FUND MANAGERS;
AND FOR INCIDENTAL AND CONNECTED PURPOSES**

The Securities Investment Business (Amendment) Bill, 2015

**THE SECURITIES INVESTMENT BUSINESS (AMENDMENT) BILL,
2015**

MEMORANDUM OF OBJECTS AND REASONS

This Bill would make provision for the regulation of EU Connected Fund Managers under the Alternative Investment Fund Managers Directive and provide for incidental and connected purposes.

Clause 1 of the Bill would set out the short title and commencement.

Clause 2 of the Bill amends section 2 of the principal Law so that relevant terms necessary for the implementation of the AIFMD are included in the principal Law.

Clause 3 of the Bill amends section 5 which sets out the requirements for entities to be licensed under the principal Law. This section also makes provision for the entities which are exempt from the licensing regime under the principal Law. The clause makes provision for entities that are currently licensed and entities which do not presently require a licence to elect to be registered or licensed under the principal Law. It also provides that entities making this election would be agreeing to be subjected to the current regulatory powers of the Authority as prescribed under the principal Law.

Clause 4 makes provision for activities related to EU Connected Funds to be included in the activities that meet the requirements of securities investment business under the principal Law.

**THE SECURITIES INVESTMENT BUSINESS (AMENDMENT) BILL,
2015**

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment of section 2 of the Securities Investment Business Law (2011 Revision) - definitions
3. Amendment of section 5 - requirement for a licence
4. Amendment of Schedule 2 - securities investment business - regulated activities

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AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Securities Investment Business (Amendment) Law, 2015.

Short title and
commencement

(2) This Law shall come into force on such date as may be appointed by Order made by Cabinet.

2. The Securities Investment Business Law, (2011 Revision), in this Law referred to as the "principal Law", is amended in section 2 by inserting in the appropriate alphabetical sequence the following definitions -

Amendment of section
2 of the Securities
Investment Business
Law (2011 Revision) -
definitions

"AIF" means a scheme or arrangement in respect of which activities are carried on in the course of securities investment business as defined in schedule 2 and is marketed in a EU Member State;

"AIFM" means a person who in the course of business is managing one or more AIFs;

"AIFMD" means the Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers

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and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010;

“EEA” means the European Economic Area established by the Agreement on the European Economic Area which entered into force on 1st January, 1994 and the relevant amending annexes and protocols;

“equity interest” means a share, trust unit or partnership interest that -

- (a) carries an entitlement to participate in the profits or gains of the company, unit trust or partnership; and
- (b) is redeemable or repurchasable at the option of the investor and, in respect of a company incorporated in accordance with the Companies Law (2013 Revision) (including an existing company as defined in that law), in accordance with but subject to section 37 of the Companies Law (2013 Revision) before the commencement of winding-up or the dissolution of the company, unit trust or partnership, but does not include debt, or alternative financial instruments as prescribed under the Banks and Trust Companies Law (2013 Revision);

“EU” means the European Union established by the Treaty on European Union signed in Maastricht on 7th February 1992;

“EU Connected Fund” means a company, unit trust or partnership which issues -

- (a) equity interests ; or
- (b) shares, trust units or partnership interests that carry an entitlement to participate in the profits or gains of the company, unit trust or partnership that are not redeemable or purchasable at the option of the investor,

the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and enabling investors in the company, unit trust or partnership to receive profits or gains from the acquisition, holding, management or disposal of investments and is -

- (i) managed by a person whose registered office is in a Member State and whose regular business is managing one or more AIFs notified to the Authority as being identified to the relevant competent authority of a Member State in accordance with the relevant Law implementing the AIFMD in the Member State; or
- (ii) marketed to investors or potential investors in a Member State, as notified to the Authority as being identified to the relevant

competent authority of a Member State in accordance with the relevant Law implementing the AIFMD in the Member State;

“EU Connected Manager” means a person who carries on or purports to carry on securities investment business in relation to any of the activities set out in paragraphs 5, 6 or 7 of Schedule 2 and is a person to whom section 4(1)(a) or (b) refers;

“Member State” means a state which is -

- (a) a member of the EU; or
- (b) a part of the EEA in which the AIFMD has been implemented;

“share” in the case of a company limited by guarantee, includes an interest of a member of the company;

“trust unit” means a unit of participation in a unit trust; and

“unit trust” means a trust established by a trustee which, for valuable consideration, issues trust units in profits or gains arising from the acquisition holding, management or disposal of investments by the trustee of the trust, the proper law of which is the law of the Islands or the law of any other jurisdiction.

3. The principal Law is amended in section 5 as follows -

Amendment of section
5 - requirement for a
licence

- (a) in subsection (2) by inserting after the words “to conduct securities investment business” the words “but may, if those persons are EU Connected Managers in respect of any of the activities set out in paragraphs 5, 6 or 7 of Schedule 2, elect to apply to be licensed under this Law”; and

- (b) by inserting after subsection (2) the following subsections -

“ (2A) A person who is not specified in Schedule 4 and who is an EU Connected Manager shall, in the manner prescribed, notify the Authority that the person is an EU Connected Manager.

(2B) A person who elects to apply to be licensed under this Law pursuant to sections 5(2) or 5(2A) shall apply to the Authority in the manner prescribed.

(2C) An EU Connected Manager who is an AIFM shall not carry on securities investment business with respect to the activity set out in paragraph 7 of Schedule 2.

(2D) Where an application is made under subsection (2B), the Authority, after considering the application may grant a licence to the applicant in the manner that the Authority considers appropriate.

(2E) Where a notification is made to the Authority pursuant to subsection (2A), the Authority, where the Authority considers it necessary, may modify an existing licence previously granted by the Authority to a person and impose conditions upon the licence with respect to the activities set out in paragraphs 5, 6 or 7 of Schedule 2.

(2E) An EU Connected Manager who elects to be licensed under this Law shall comply with the applicable provisions of this Law.”.

Amendment of Schedule
2 - securities investment
business regulated
activities

4. The principal Law is amended in Schedule 2 by inserting after paragraph 4 the following paragraphs -

“5. Managing EU Connected Funds

Performing investment management functions, comprising at least of risk or portfolio management, for one or more EU Connected Funds as notified to the relevant competent authority of the relevant Member State in accordance with the relevant laws and regulations implementing the AIFMD in the Member State.

6. Marketing EU Connected Funds

Marketing the shares, trust units or partnership interests of an EU Connected Fund to investors or potential investors in a Member State, as notified to the relevant competent authority of the relevant Member State in accordance with the relevant laws and regulations implementing the AIFMD in the Member State.

7. Acting as Depositary of an EU Connected Fund

Performing the function of a depositary for an EU Connected Fund in accordance with the relevant Laws and regulations implementing AIFMD in any Member State.”.

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Passed by the Legislative Assembly the day of , 2015.

Speaker.

Clerk of the Legislative Assembly.