



CAYMAN ISLANDS

Guidance Notes

For the issuance of penalty fees under
Section 56 of the Companies Law
(as amended)

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Overview

The Ministry of Financial Services advises that The Companies (Amendment) Law 2015 will commence on Monday, 2 November 2015. This Law amends Section 55 of the Companies Law (2013 Revision) referred to as the principal Law. The section creates an obligation on a company to maintain a register of all the directors and officers of the company and to notify the Registrar of any changes in respect of the directors and officers. Pursuant to this section, the Registrar is to be provided with a copy of the register within ninety days of the registration of the company and notify of changes in the register within thirty days of a change in the information contained in the register.

This amendment law, which was passed in the Legislative Assembly on 12 August, requires companies to notify the Cayman Islands Registrar of Companies of changes in the information contained in the register of directors and officers, within 60 days of the change. It also establishes a CI\$500 maximum penalty per company for a breach of that obligation, and an aggregate penalty of CI\$2,500 where the same breach occurs in respect of five or more companies.

Fee Implementation

In preparation for the transition to the amendment law, the Registrar of Companies will not impose penalty fees for the late filing of changes to directors and officers of companies. This waiver period will commence on Tuesday, 1 September 2015, and end at 5pm on Friday, 30 October 2015.

The Registrar of Companies will not impose any penalty fees for the late filing of changes to directors and officers of companies that are filed with the Registrar of Companies during the waiver period, regardless of when the changes being submitted were made, and how many late changes are submitted. In addition, penalty notices that have been issued prior to the start of the waiver period, but have not been paid, will be cancelled.

It should, however, be noted that after the waiver period, the amendment law will be strictly enforced by the Registrar of Companies. Penalty fees shall be imposed in accordance with the amendment law, including against companies where changes in directors and officers occurred during the waiver period but are filed in a late fashion with the Registrar of Companies post the waiver period.

These guidance notes should be used as instructions in the application and calculation of the penalties payable under section 56 of The Companies (Amendment) Law, 2015.

Fee Calculations

The following should be noted when calculating penalties:

- ▶ It does not matter how many directors or officers were changed on a particular date or within a 60 day period so long as the Registrar is notified on the same date it is treated as one breach.
- ▶ There are no per diem penalties

Calculating the Number of Days:

The following rules based on Section 8 Interpretation Law 1995 must be borne in mind when calculating the number of days:

- ▶ Where a penalty time period elapses on a Saturday, Sunday, public holiday or other days when the offices of the Registrar are closed for the full day the time period shall be treated as elapsing on the next following day when the offices of the Registrar are open.
- ▶ A period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done Therefore the date of appointment or resignation should not be included in the calculation.

Change Effective Date

The Registrar should be notified of appointments or changes only after the effective date.

- ▶ The effective date for CIMA regulated entities is the date of CIMA approval. The resolution date in this instance is not applicable
- ▶ The effective date for Section 80 Companies Date of Cabinet Approval. The resolution date in this instance is not applicable
- ▶ The effective date for all other applications would be the date of the last required signature – Section 60(1)(b) Companies Law (2013 Revision)

WORKED EXAMPLES

The following worked examples may be used as guides to determining & computing penalties

SINGLE BREACH

Example 1 – within 60 day period

- ▶ Any Company Ltd registered: 1st September 2015
- ▶ First appointment of director: 17th Oct 2015
- ▶ Register filed on 16 Dec 2015.

Any Company Ltd ROC#115679 Register of Directors & Officers		Example 1	
		Filing date	16-Dec-15
Name	Director	Date of Appointment	How many days elapsed
Any Man	Director	17-Oct-15	60
Notes: We ignore the registration date NO PENALTIES –18 October to 16 Dec 2015 is 60 days (just in time!)			

Example 2 – filed after 60 day period

- ▶ Any Company Ltd registered: 1st September 2015
- ▶ First appointment of director: 17th Oct 2015
- ▶ Register filed on 21 Dec 2015.

Any Company Ltd		Example 2	
ROC#115679			
Register of Directors & Officers			
		Filing date	21-Dec-15
Name	Director	Date of Appointment	How many days elapsed
Any Man	Director	17-Oct-15	65
<p>Notes: We ignore the registration date PENALTIES \$500 (days elapsed >60)</p>			

Example 3 – 60 days elapsed on an exempted day

- ▶ Any Company Ltd registered: 1st September 2015
- ▶ First appointment of director: 26th Oct 2015
- ▶ Register filed on 29 Dec 2015.

Any Company Ltd		Example 3	
ROC#115679			
Register of Directors & Officers			
		Filing date	29-Dec-15
Name	Director	Date of Appointment	How many days elapsed
Any Man	Director	26-Oct-15	64
<p>Penalties We ignore the registration date 60 days would elapse on 25th December 2015 – that’s Christmas day and the office is closed. The next business day s 29th December 2015 – NO PENALTY</p>			

MULTIPLE BREACHES

If a company breaches the requirement to notify the Registrar of a change in the register more than once, as long as

1. The breaches occur within a 60 day period and
 2. The Registrar is notified of the changes on the same day,
- the breaches will be penalized as one breach

Example 1 – Multiple breaches all within a 60 day period

Any Company Ltd		MULTIPLE BREACHES 1		
ROC#115679				
Register of Directors & Officers				
			Filing date	20-Jan-16
Name	Director	Date of Appointment	How many days elapsed?	How many days apart?
Any Man	Director	21-Sep-15	121	59
Minor Child	Chairman	10-Oct-15	102	40
Any Director	Director/Secretary	19-Nov-15	62	
<p>How Calculated? How many days Elapsed? filing date minus change date How many days apart? last change date minus each change date</p>				
<p>Penalties All appointments were within a 60 day period (oldest being 59 days before the last) therefore they are penalized together</p>				
			TOTAL PENALTIES	\$ 500

Example 2 – Multiple breaches: dates outside a 60 day period

Any Company Ltd		MULTIPLE BREACHES 2		
ROC#115679				
Register of Directors & Officers		Example - More than one change in D&O		
		Filing date	20-Jan-16	
Name	Director	Date of Appointment	How many days elapsed?	How many days apart?
Any Man	Director	7-Sep-15	135	73
Minor Child	Chairman	10-Oct-15	102	40
Any Director	Director/Secretary	19-Nov-15	62	
How Calculated?				
How many days Elapsed? filing date minus change date				
How many days apart? last change date minus each change date				
Penalties				
The appointment of Any man is 73 days before the appointment of Any Director (not in a 60 days period therefore it is penalized on its own			\$ 500	
Minor Child and Any Director were appointed within a 60 day period (40 days) therefore they are penalized together			\$ 500	
TOTAL PENALTIES			\$ 1,000	

Example 3: Multiple breaches within a 60 day period (filing includes date which is not in breach)

Any Company Ltd ROC#115679 Register of Directors & Officers		MULTIPLE BREACHES 3 Where 1 or more entries are within the 60 days		
Example - More than one change in D&O				
		Filing date	17-Jan-16	
Name	Director	Date of Appointment	How many days elapsed?	How many days apart?
Any Man	Director	7-Sep-15	132	33
Minor Child	Chairman	10-Oct-15	99	
Any Director	Director/Secretary	19-Nov-15	59	On time: not considered in calculation
How Calculated?				
How many days Elapsed? filing date minus change date				
How many days apart? last change date minus each change date				
Penalties				
Any Man and Minor Child were appointed within a 60 day period (33 days) therefore they are penalized together				
TOTAL PENALTIES				\$500

Example 4: Multiple breaches – date outside 60 day period and include date which is not in breach

Any Company Ltd ROC#115679 Register of Directors & Officers		MULTIPLE BREACHES 4		
Example - More than one change in D&O				
Filing date 17-Jan-16				
Name	Director	Date of Appointment	How many days elapsed?	How many days apart?
Any Man	Director	7-Sep-15	132	64
Minor Child	Chairman	10-Nov-15	68	
Any Director	Director/Secretary	19-Nov-15	59	On time: not considered in calculation
How Calculated?				
How many days elapsed? filing date minus change date				
how many days apart? last change date minus each change date				
Penalties				
The appointment of Any man is 64 days before the appointment of Minor Child (not in a 60 days period) therefore they are penalized separately			Any Man	\$ 500
			Minor Child	<u>\$ 500</u>
			TOTAL	
			PENALTIES	\$1,000

CHANGE AFFECTING MULTIPLE COMPANIES

Where breaches of Section 55 occur in respect of more than 5 companies, the applicable aggregate penalty shall not exceed \$2,500 which shall be borne equally by the offending companies

Clients will be given 24 hours to upload all applications affected by the change

Upon filing the register that contains late entries the client will be asked to upload a listing of all the companies (more than 5) that are affected by the change in director/officer stating:

- ▶ ROC #
- ▶ Name of Company
- ▶ Name of Director/Officer

Template – Appendix A

We will process only after all registers are filed.

The \$2,500 will be divided by the total number of companies affected AND APPLIED EQUALLY

A penalty letter will be prepared for each company

CORRECTIONS

The Registry does not take responsibility for the contents of the registers. The data is accepted as valid. The review process is geared at assessing penalties. If an error is identified subsequent to approval a request should be sent to CIGENREG@gov.ky to arrange for correction. The cost for making such corrections is \$50.

APPENDIX A

CLIENT'S LETTERHEAD

Date

Registrar of Companies
Government Administration Building
George Town, Grand Cayman

Dear Sirs:

**Re: Late filing of Directors and Officers
Application of penalties pursuant to S56(2)(b)**

We acknowledge that the appointment/resignation of ANY DIRECTOR was not filed with the Registrar within sixty days. He is a director of the following companies:

	ROC#	Name	Penalties
1	124325	Happy Ltd	357.14
2	125875	Lonely Limited	357.14
3	145685	Patient Inc.	357.14
4	265780	Success Sure Ltd	357.14
5	245876	Crazy Ventures Ltd	357.14
6	156987	Wishing Ltd	357.14
7	301258	Just Because Limited	357.16
		TOTAL PENALTIES	2,500.00

Please apply the penalties in accordance with S56(2)(b). We confirm that the registers have been filed for all companies in the list reflecting the appointment/resignation of ANY DIRECTOR.

We further accept that other companies, not included in this list, that are affected by this appointment/resignation, will be assessed on their own and will not obtain the benefits of the reduced penalties.

Sincerely,

Client's signatory
NAME
For and on behalf of CLIENT