



CAYMAN ISLANDS

# **Directors & officers General Guidance Notes**

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## Overview

The Ministry of Financial Services advises that The Companies (Amendment) Law 2019 has commenced 08<sup>th</sup> August 2019 with the exception of S55A. This Law amends Section 55 and 56 of the Companies Law (2018 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.

This amendment law, which was passed in the Legislative Assembly on 8th August, requires companies to notify the Cayman Islands Registrar of Companies the first appointment of directors within 60 days and of changes in the information contained in the register of directors and officers, within 30 days of the change.

The amendment Law further requires the Registrar, under S55A, to make a list of the names of directors available for inspection by any person.

The principal Law prescribes 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 order to facilitate a smooth transition to the provisions under the Companies Amendment Law, 2019 the Registrar, under S199 of the Companies Law (2108 Revision), approved an extension to file **changes** in directors & officers to the **6<sup>th</sup> September 2019** without the assessment of penalties providing that the period elapsed between the change and the filing date has not exceeded 60 days.

Therefore if the period between the change and the filing (up to 6<sup>th</sup> September) of such change is greater than 30 days but less than or equal to 60 days no penalty will apply.

After the 6<sup>th</sup> September 2019 penalties will apply to all changes filed 30 days after such change.

These guidance notes should be used as instructions in the application and calculation of the penalties payable under section 56 of The Companies Law (2018 Revision).

## Fee Calculations

The following should be noted when calculating penalties:

- ▶ **60** days is allowed for the filing of the first appointment of director(s)
- ▶ **30** days are allowed for the filing of all changes to directors (appointments & resignations)
- ▶ It does not matter how many directors or officers were changed on a particular date or within a **30 day period** so long as the Registrar is notified on the same date it is treated as one breach.
- ▶ Penalty for late filing is \$500
- ▶ 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 which is dependent upon the occurrence of an event is the date of the event. The resolution date in this instance is not applicable however, in addition to submitting the resolution, documentation **MUST** be provided for verification of the occurrence of the event.
- ▶ The effective date for all other applications would be the date of the last required signature – Section 60(1)(b) Companies Law (2018 Revision)

## WORKED EXAMPLES

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

### FIRST APPOINTMENT - SINGLE BREACH

#### Example 1 – within 60 day period

- ▶ Any Company Ltd registered: 1<sup>st</sup> September 2019
- ▶ First appointment of director: 17th October 2019
- ▶ Register filed on 16 Dec 2019.

Any Company Ltd		<b>Example 1</b>	
ROC#115679			
Register of Directors & Officers			
		Filing date	16-Dec-19
Name	Director	Date of Appointment	How many days elapsed
Any Man	Director	17-Oct-19	60
<b>Notes:</b> We ignore the registration date <b>NO PENALTIES –18 October to 16 December 2019 is 60 days (just in time!)</b>			

#### Example 2 – filed after 60 day period

- ▶ Any Company Ltd registered: 1<sup>st</sup> September 2019
- ▶ First appointment of director: 17th Oct 2019
- ▶ Register filed on 20 Dec 2019.

Any Company Ltd		<b>Example 2</b>	
ROC#115679			
Register of Directors & Officers			
		Filing date	20-Dec-19
Name	Director	Date of Appointment	How many days elapsed
Any Man	Director	17-Oct-19	64
<b>Notes:</b> We ignore the registration date <b>PENALTIES \$500 (days elapsed &gt;60)</b>			

### Example 3 – 60 days elapsed on an exempted day

- ▶ Any Company Ltd registered: 1<sup>st</sup> September 2019
- ▶ First appointment of director: 26th Oct 2019
- ▶ Register filed on 27 Dec 2019.

Any Company Ltd		<b>Example 3</b>	
ROC#115679			
Register of Directors & Officers			
		Filing date	27-Dec-19
Name	Director	Date of Appointment	How many days elapsed
Any Man	Director	26-Oct-19	64
<p><b>Penalties</b>            We ignore the registration date            60 days would elapse on 25<sup>th</sup> December 2019 – that’s Christmas day and the office is closed.            The next business day s 27<sup>th</sup> December 2019 – <b>NO PENALTY</b></p>			

### FIRST APPOINTMENT FILED WITH SUBSEQUENT CHANGES

- ▶ Any Company Ltd registered: 1<sup>st</sup> September 2019
- ▶ First appointment of director: 26th Oct 2019
- ▶ Additional Appointment: 20 Nov 2019
- ▶ Register filed on 27 Dec 2019.

Any Company Ltd		<b>Example 4</b>	
ROC#115679			
Register of Directors & Officers			
		Filing date	27-Dec-19
Name	Director	Date of Appointment	How many days elapsed
Any Man	Director	26-Oct-19	64
Any Director	Executive Director	01-Nov-19	55
<p><b>Penalties</b>            We ignore the registration date  <b>First Appointment</b>            60 days would elapse on 25<sup>th</sup> December 2019 – that’s Christmas day and the office is closed.            The next business day s 27<sup>th</sup> December 2019 – <b>NO PENALTY</b></p> <p>Additional Appointment filed later than 30 days– <b>Penalty of \$500</b></p>			

### FIRST APPOINTMENT FILED WITH SAME DATE RESIGNATION

- ▶ Any Company Ltd registered: 1<sup>st</sup> September 2019
- ▶ First appointment of director: 26th Oct 2019
- ▶ Resignation of director: 26th Oct 2019
- ▶ Register filed on 27 Dec 2019.

Any Company Ltd		<b>Example 4</b>	
ROC#115679			
Register of Directors & Officers			
		Filing date	27-Dec-19
Name	Director	Date of Appointment & Resignation	How many days elapsed
Any Man	Director	26-Oct-19	64
<p><b>Penalties</b>            We ignore the registration date  <b>First Appointment</b>            60 days would elapse on 25<sup>th</sup> December 2019 – that’s Christmas day and the office is closed.            The next business day s 27<sup>th</sup> December 2019 – <b>NO PENALTY for appointment</b></p> <p>Resignation filed later than 30 days– <b>Penalty of \$500</b></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 30 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 30 day period**

Any Company Ltd		<b>MULTIPLE BREACHES 1</b>		
ROC#115679				
Register of Directors & Officers				
			Filing date	20-Jan-20
Name	Director	Date of Appointment	How many days elapsed?	How many days apart?
Any Man	Director	21-Sep-19	121	10
Minor Child	Chairman	28-Sep-19	114	3
Any Director	Director/Secretary	01-Oct-19	111	
<p><b>How Calculated?</b>            How many days Elapsed? <b>filing date minus change date</b>            How many days apart? <b>last change date minus each change date</b></p>				
<p><b>Penalties</b>            All appointments were within a 30 day period therefore they are penalized together</p>				
			TOTAL PENALTIES	\$ 500



**Example 2 - Multiple breaches: dates outside a 30 day period**

Any Company Ltd		<b>MULTIPLE BREACHES 2</b>		
ROC#115679				
Register of Directors & Officers		Example - More than one change in D&O		
		Filing date	20-Jan-20	
Name	Director	Date of Appointment	How many days elapsed?	How many days apart?
Any Man	Director	7-Sep-19	135	73
Minor Child	Chairman	21-Oct-19	102	29
Any Director	Director/Secretary	19-Nov-19	62	
<b>How Calculated?</b>				
How many days Elapsed? <b>filing date minus change date</b>				
How many days apart? <b>last change date minus each change date</b>				
<b>Penalties</b>				
The appointment of Any man is 73 days before the appointment of Any Director (not in a 30 days period therefore it is penalized on its own			\$ 500	
Minor Child and Any Director were appointed within a 30 day period (29 days) therefore they are penalized together			\$ 500	
TOTAL PENALTIES			\$ 1,000	

**Example 3: Multiple breaches within a 30 day period (filing includes date which is not in breach)**

Any Company Ltd ROC#115679 Register of Directors & Officers		<b>MULTIPLE BREACHES 3</b> Where 1 or more entries are within the 30 days		
		Example - More than one change in D&O		
		Filing date	17-Dec-19	
Name	Director	Date of Appointment	How many days elapsed?	How many days apart?
Any Man	Director	7-Sep-19	101	24
Minor Child	Chairman	01-Oct-19	77	
Any Director	Director/Secretary	19-Nov-19	28	On time: not considered in calculation
<b>How Calculated?</b>				
How many days Elapsed? filing date minus change date				
How many days apart? last change date minus each change date				
<b>Penalties</b>				
Any Man and Minor Child were appointed within a 30 day period (24 days) therefore they are penalized together				
<b>TOTAL PENALTIES</b>				<b>\$500</b>

**Example 4: Multiple breaches – date outside 30 days period and include date which is not in breach**

Any Company Ltd ROC#115679 Register of Directors & Officers		<b>MULTIPLE BREACHES 4</b>		
Example - More than one change in D&O				
Filing date				17-Dec-19
Name	Director	Date of Appointment	How many days elapsed?	How many days apart?
Any Man	Director	7-Sep-19	101	33
Minor Child	Chairman	10-Oct-19	68	
Any Director	Director/Secretary	19-Nov-19	28	On time: not considered in calculation
<b>How Calculated?</b>				
How many days elapsed? <b>filing date minus change date</b>				
how many days apart? <b>last change date minus each change date</b>				
<b>Penalties</b>				
The appointment of Any man is 33 days before the appointment of Minor Child (not in a 30 days period) therefore they are penalized separately			Any Man	\$ 500
			Minor Child	<u>\$ 500</u>
			<b>TOTAL</b>	
			<b>PENALTIES</b>	<b>\$1,000</b>

**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](mailto:CIGENREG@gov.ky) to arrange for correction.

The Registry will deal with the various scenarios as stated below:

	Scenario	Procedure	Cost of correction
1	<p>The directors and officers were manually filed by the client but ROC did not update CORIS.</p> <p>The client does not have an outstanding filing to make</p>	ROC to do the update based on register filed.	\$0
2	<p>The directors and officers were manually filed by the client but ROC did not update CORIS.</p> <p>The client has an outstanding filing to make.</p>	<p>Client to submit the updated register with all the entries previously filed plus the outstanding filings.</p> <p>Client to upload stamped register</p> <p>ROC will review against what was previously filed</p> <p>ROC (Asst. Registrar) to adjust notification date of previously filed entries to agree with original ROC stamp date.</p> <p>Penalties will only apply to filings that were not previously made to ROC</p> <p>Approve</p>	\$0
3	<p>The directors and officers were manually filed by the client</p> <p>ROC updated CORIS incorrectly</p> <p>Client has no outstanding filings</p>	ROC to make corrections based on register filed	\$0
4	<p>The directors and officers were manually filed by the client but ROC updated CORIS incorrectly</p> <p>Client has outstanding filings</p>	<p>ROC to make all corrections prior to the client's submission of the outstanding filings.</p> <p><b>ALTERNATELY</b></p>	\$0

	Scenario	Procedure	Cost of correction
		<p>If the matter is time sensitive The client may make the filing of the changes and include in the comment all the corrections that should be made.</p> <p>ROC will perform the corrections in CORIS</p> <p>Then assess and approve new filing in EDMS</p>	
5	The client filed the register with errors – incorrect spelling, address	<p>Client to update names and or addresses</p> <p>Client to upload letter in EDMS explaining the change being made and why.</p>	\$75
6	The client filed the register with errors – incorrect office held, appointment or resignation date	<p>Client to provide a copy of the resolution or a letter on their letterhead explaining the error.</p> <p>ROC assess for penalties</p> <p>ROC upload the letter in EDMS</p> <p>ROC update CORIS</p>	\$75
7	The client filed an appointment in error – <ul style="list-style-type: none"> <li>the director was never appointed</li> </ul>	<p>Client to submit a copy of the resolution that was passed on the date specified showing that the director was never included in the appointments.</p> <p>ROC make the correction</p>	\$75
8	The client filed an appointment in error – <ul style="list-style-type: none"> <li>The director never accepted the appointment</li> </ul>	<p>Client to provide a letter from the named director stating that the appointment was never accepted.</p>	\$75
9	The client makes a filing prior to the effective appointment date:	<p>Client to provide copy of the resolution, CIMA or Cabinet approval letter</p> <p>ROC change notification date to date of current correspondence.</p>	\$75

## SPECIAL CONSIDERATIONS

### ➤ DEATH OF A DIRECTOR OR OFFICER

Upon the death of a director or officer a discretionary extension for filing will be allowed of six (6) months from the date of death. A death certificate **must** be submitted with the filing. If the certificate cannot be produced then the penalties will apply.

After the six months has elapsed regular penalties will apply.

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
<b>TOTAL PENALTIES</b>			<b>2,500.00</b>

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