

Cayman Islands Monetary Authority

PRIVATE SECTOR CONSULTATION



STATEMENT OF GUIDANCE – NATURE, ACCESSIBILITY, AND RETENTION OF RECORDS

A. Introduction

1. Section 34(1)(a) of the Monetary Authority Law (2016 Revision) (as amended) ("MAL") states that –

After private sector consultation and consultation with the Minister charged with responsibility for Financial Services, the Authority may –

- (a) *issue or amend rules or statements of principle or guidance concerning the conduct of licensees and their officers and employees, and any other persons to whom and to the extent that the regulatory laws may apply;*
2. Requirements specific to the private sector consultation are outlined in section 4(1) of the MAL as follows:

When this Law requires private sector consultation in relation to a proposed measure
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- (a) *the Authority shall give to each private sector association a draft of the proposed measure, together with –*
 - i. *an explanation of the purpose of the proposed measure;*
 - ii. *an explanation of the Authority's reasons for believing that the proposed measure is compatible with the Authority's functions and duties under section 6;*
 - iii. *an explanation of the extent to which a corresponding measure has been adopted in a country or territory outside the Islands;*
 - iv. *an estimate of any significant costs of the proposed measure, together with an analysis of the benefits that will arise if the proposed measure is adopted; and*
 - v. *notice that representations about the proposed measure may be made to the Authority within a period specified in the notice (not being less than thirty days or such shorter period as may be permitted by subsection (3));and*
 - (b) *before proceeding with the proposed measure, the Authority shall have regard to any representations made by the private sector associations, and shall give a written response, which shall be copied to all the private sector associations.*

3. The Cayman Islands Monetary Authority ("Authority" or "CIMA") seeks consultation and comment from the private sector associations concerning the following:
 - a. Amendment to the Statement of Guidance ("SOG") on the Nature, Accessibility and Retention of Records.
4. The SOG is attached as Appendix 1.

B. Background

5. The existing SOG was first issued in October 2003. The proposed amended SOG is based on research conducted by the Authority, feedback received from industry participants, the Regulatory Laws and a review of laws/measures issued in various jurisdictions.
6. Record-keeping practices have evolved over the years. As such, further guidance to registered/regulated entities would be beneficial to provide clarity about the Authority's expectations. Based on industry queries and observations derived from supervisory practices, the Authority found it prudent to update the SOG to:
 - Enhance requirements for records taking into account requirements in non-regulatory laws;
 - Expand the scope of application to include all persons/entities regulated and/or registered under all Regulatory Laws;
 - Recommend a 24-72 hour timeframe that the Authority expects generally to have access to most records regardless of location of the records;
 - Insert a new section regarding the conversion of paper-based records to electronic records and the treatment of electronic records;
 - Expand on the treatment of all records including client records;
 - Expand on the maintenance of records outside the Cayman Islands; and
 - Where possible, offer clarification on elements of the SOG considered vague.
7. In addition, the revised SOG will help the Cayman Islands further demonstrate its commitment to ensuring proper upkeep of books and records, noting that discussions surrounding beneficial ownership information have been a high priority to international organisations such as the Organization for Economic Cooperation and Development and the Financial Action Task Force.

C. Purpose of Amended SOG on the Nature, Accessibility, and Retention of Records and Consistency with the Authority's Functions

8. Section 6(1) of the MAL provides that the principal responsibilities of the Authority include its regulatory functions, inter alia, "to regulate and supervise financial services business carried on in or from within the Islands."
9. Section 6(3) of the MAL provides that in performing its regulatory functions, the Authority shall, inter alia:
 - a) endeavour to promote and enhance market confidence and the reputation of the Islands as a financial centre;

- b) recognise the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, vis a vis both consumers and suppliers of financial services, while conforming to internationally applied standards insofar as they are relevant and appropriate to the circumstances of the Islands;
 - c) recognise the principle that a burden or restriction which is imposed on a person or activity should be proportionate to the benefits, considered in general terms; and
 - d) recognise the desirability of facilitating innovation in financial services business.
10. The proposed amendments to the SOG aim to better capture emerging record keeping considerations and set out the Authority's minimum expectations on how relevant entities should maintain their books and records. The SOG is issued in exercise of the Authority's regulatory function. It is expected the SOG will enhance market confidence and the reputation of the Islands as a financial centre, better recognize record keeping practices in the context of international markets and support innovation.

D. Implementation in Other Jurisdictions

11. A review of nine jurisdictions was conducted – Australia, Bahamas, BVI, Canada, Guernsey, Jersey, Ireland, Isle of Man, and the UK. Records management practices were observed in both the legal and regulatory frameworks of the jurisdictions assessed, but there were only a few instances where financial services regulators issued comprehensive guidance on treatment of records by relevant entities. An analysis of the main themes is presented.

Accessibility of Records

12. All of the jurisdictions assessed require that relevant entities make available any record upon the request of the financial services regulator. However, only Isle of Man, in the Financial Services Rulebook, specifies that records should be maintained in such a manner that they can be produced within 24 hours of demand. Most other jurisdictions used language to indicate timelines, i.e. "without delay", "immediately", or "within a reasonable timeframe".
13. Some jurisdictions, such as Jersey and the UK, also instruct that records should be made available to the regulator in the English language. Jersey's Codes of Practice stipulate that registered persons are expected to maintain all records in a language understood by the employees of the business but these records must be translated into English at the request of the FSC and records must be retrievable within the jurisdiction without delay. The UK PRA's Supervisory Statement on Internal Governance, updated May 2016, states that records are expected to be reproduced in English on paper and where a firm is required to retain a record of a communication that was not made in English, the records may be retained in that language but must be translated upon request by the PRA. If records relate to a business carried on from a country outside the UK, then the language of that country may be used.

Records retention policy

14. A few of the jurisdictions request that relevant entities develop and maintain a record retention policy/programme and make it available to the regulator upon request. OSFI in Canada, issued a bulletin "Retention/Destruction of Records" in May 1993 advising relevant entities to prepare a records retention/destruction programme and make it available to OSFI upon request. The relevant entities are advised that consideration should be given to provincial statutes and that the areas listed in the bulletin should be covered, such as claims records, general ledgers and journals, and policy files. Minutes of directors and shareholders meetings, registers of directors, shareholder records, and other correspondence of historical value should be retained indefinitely.
15. The BVI FSC Regulatory Code states that licensees should include the period of time records are to be kept, the storage and security of records, and the process by which records will be made readily available to the FSC. The Central Bank of Ireland takes this further and instructs relevant entities to detail in the policy the handling of records during business interruption, the reporting of record keeping arrangements to the board of directors, and the roles and responsibilities of employees involved in record management.

Record retention and timeframes

16. While most jurisdictions state that records should be retained by the relevant entity, some elaborate further by providing examples of the types of records to be held. For instance, Guernsey in its "Code of Practice for Corporate Service Providers" indicates the retention of accounting records, company registers, and records of material communication with clients or their companies as well as the proceedings of company meetings. The Central Bank of the Bahamas "Accounting Records Guidelines" advises relevant entities to have records on policies and procedures, corporate governance records such as minutes of meetings, human resources and organizational records, comprehensive client files, and thorough accounting records to ensure compliance with internationally recognized accounting principles. The Bank Act of Canada stipulates that a bank shall prepare and maintain corporate account records; incorporation records and director information; particulars of authorizations, conditions, exceptions granted by OSFI; and records for each customer of the bank showing particulars of transactions on a daily basis. All jurisdictions stipulate that accounting records should be sufficient to show and explain transactions at any time and in reasonable accuracy to enable accurate assessment of the financial position of the relevant entity.
17. Record keeping requirements in Ireland is found in legislation such as Companies Management Act 1990, Irish Data Protection Acts 1998 and 2003, and Statute of Limitations Act, 1957. There are no statutory requirements for the length or retention of general correspondence records; however the general obligation for retention of company accounts, books of account and records in Ireland is 6 years. It is recommended that shareholder and board resolutions and meeting minutes, company incorporation documents, shareholder's register, and rules of procedure for the supervisory boards be retained for at least 13 years but ideally for the entire duration of the company. Records and documents of a dissolved legal entity are to be maintained for a minimum of 7 years but ideally permanently. The retention of human resources records vary depending on the type of record. Payroll records may

be retained for 3 years and for the duration of the contract after which they are to be retained for 7 years following expiration of the contract; and human resources policies and administration records on pension plans and schemes are to be retained permanently.

18. The legislative framework in the UK establishes the retention timeframe for records based on the type of record being held by a company. The Money Laundering Regulations 2007 establishes the general obligation for CDD at 5 years, the Companies Act sets out a minimum of 10 years for records relating to company incorporation and meetings of the board of directors, and various other types of legislation establishes the salary and HR records for approximately 6 years depending on the type of record. Records of creditors and debtors should be kept for at least the minimum retention period but it is recommended that they be kept for as long as they are relevant to the operations of the business. Contracts, agreements, and intellectual property records are to be maintained for the length of the contract and at least 6 years following. The PRA Rulebook instructs that firms must retain records of its business and internal operations for at least 5 years. Records must be readily accessible by the PRA or the FCA, enabling the regulators to monitor compliance to regulatory requirements.
19. In Australia, the 2015 edition of The Australian Record Retention Manual ("ARRM"), provides a comprehensive description of categories of records and the legal and regulatory requirements for records maintenance. The ARRM suggests administrative and management records should be retained for a period of 7 years (1 year on-site); corporate records such as incorporation documents, shareholders and directors meeting minutes and board resolutions, and other documents which establish the legality of the entity, should be retained on-site for 10 years but permanently by the entity. Various registers such as Registers of directors or members, registers of trustees, and seal registers should be maintained on-site for 1 year but permanently by the entity. There should also be a list of destroyed records or those pending destruction which should be retained permanently by the entity. Further, the Australian Securities & Investments Commission ("ASIC") offers guidance to registered or licensed entities by setting out the requirements in the Corporations Act 2001. Financial services licensees are required to continuously have access to records during the period of time records are to be kept (i.e. 7 years) regardless if the records are kept by authorized representatives. Additionally, the obligation continues even if the licensee ceases to be a licensee or the authorized representative ceases to be such during that period.

Electronic Records

20. Some jurisdictions include the treatment of electronic records in their guidelines and policies. The "Role of the Principal Officer and Record Keeping Requirements" guideline, published by Canada's OSFI, provides guidance to branches of foreign banks. Branches are allowed to maintain records in hard copy or electronically, provided that electronic records can be easily reproduced using available commercial applications. However OSFI maintains the discretion to request that the hard copy be available at the branch. In general, the Bank Act allows for records to be converted to any other form (including electronic) provided that they are capable of being reproduced in an intelligible written form within a reasonable time. However, the bank is not allowed to destroy certain converted records such as accounting records, client transactions records, directions from OSFI, and incorporation records.

21. In Ireland, the legal requirement is for certain agreements and documents to be set out in writing, but there are no restrictions on converting the original paper record to an electronic record though in some cases the paper record has more evidentiary value in court. Most records, with the exception of annual financial statements and profit and loss account records are allowed to be converted to electronic records.
22. The jurisdictions in Australia each have differing requirements for electronic records. Nonetheless, generally electronic storage of financial records is allowed as long as the records can be converted to hardcopy and made available within a reasonable time. From the standpoint of the use of electronic records in Court, there are strict provisions and attention is required in an entity making the decision to maintain electronic records and destroying original paper documents. Entities are required to be familiar with the oftentimes onerous requirements and to keep in mind that arguments in court on computer-generated documents center around the accuracy and completeness of the information as it can be relatively easy to amend such records without detection.

Treatment of records upon termination of a licence or registration

23. Most jurisdictions did not specify how relevant entities should handle records following the termination of a licence or registration. The Bahamas incorporated a clause in the Insurance Act on the custody of records following dissolution of a company wherein persons granted custody of a dissolved company's records should make them available for six years following the dissolution or any other time granted by the court.
24. Jersey makes mention in the AML/CFT Guidance Notes that record keeping requirements where a business merges, changes its name, terminates certain activities or transfers a block of clients to another business, must ensure that records are accessible for required periods of time. Record keeping arrangements in cases where a relevant entity terminates its activities or transfers clients must also be agreed with the FSC.

Maintenance of records outside the jurisdiction

25. Three jurisdictions – Canada, the BVI, and the UK discuss this area in their regulatory framework.
26. The guideline "Role of the Principal Officer and Record Keeping Requirements", published by OSFI in November 2005 for branches of foreign banks, stipulates that records, regardless of any exemption to being located outside of Canada, must be continued to be maintained by the branch. Where the branches business occurs in a location other than the principal office, the records are to be backed up and provided to the branch so that the records in Canada are up to date at the end of each business day. Records expected to be maintained in Canada include a complete set of account records, customer transaction records on a daily basis, copies of outsourcing arrangements, records material to the branch in relation to its administrative operations, current organization charts and human resources information, and CDD information on customers. The Bank Act stipulates that if OSFI is of the opinion that it will not be able to fulfill its responsibilities or if the Minister of Finance determines it is not in the national interest for a bank to perform its activities in another country, the bank will be directed not to maintain copies or process information or data in another jurisdiction.

27. BVI's FSC Regulatory Code, reminds relevant entities that records should not be maintained outside the BVI if access will likely be impeded by confidentiality or data protection restrictions. In the UK, the legal framework requires that certain corporate documents be kept either at the company's location or at the registered office and be available for inspection. There are no restrictions on access from other countries and there are no restrictions on copies of documents being stored outside the UK.

E. Estimation of significant costs and benefits

28. The extent of any costs will be dependent upon the existing practices of regulated entities. For the purpose of this analysis, the costs are estimated for those firms that currently operate according to the existing SOG – Nature, Accessibility, and Retention of Records.

29. The table below shows the estimated costs and benefits of the proposed SOG.

Table 1: Estimated Costs and Benefits of Proposed Amendment to SOG on Retention of Records.

	Costs	Benefits
CIMA	1. Gazette the amended SOG. 2. Training for staff. 3. Conduct consultation with industry associations. 4. Answer queries on the SOG in the short term.	1. Enhance and support regulatory processes, in particular on-site inspections by enhancing consistency between the regulatory divisions and giving advanced notice to relevant entities regarding the standards to be met. 2. Enhance the Authority's risk-based approach to supervision. 3. Increased adoption by relevant entities of record retention practices thereby decreases the compliance and enforcement costs for the Authority. 4. Enhanced ability to perform inspections and other regulatory activities within acceptable timeframes and standards. 5. Reduced risk of destruction or loss of records. 6. Fewer queries by relevant entities in the long term.

	Costs	Benefits
<i>Cayman Islands</i>	1. Negative impact on fees collected by local service providers if more records are retained electronically or overseas.	1. Raise the jurisdiction's profile as an international financial centre. 2. Provide more protection and transparency for prospective and current investors and clients of relevant entities. 3. Assists in informing and educating the general public on the record retention requirements for relevant entities thereby improving consumer protection. 4. Supports international standards regarding maintenance of records and increase likelihood of positive assessment by international organizations. 5. Supports beneficial ownership information initiative. 6. Removal of reference to the Confidential Relationships (Preservation) Law benefits the reputation of the jurisdiction.
<i>Relevant Entities</i>	1. Cost of implementing and amending practices, policies, and procedures. 2. Costs of implementing or amending contracts with service providers. 3. Cost of service of attorneys and other professionals on record keeping enhancements. 4. Cost of improvements to or implementation of record management system. 5. Cost of storing additional or duplicate records such as those of existing or former clients, those in a language other than English, and those	1. Enhances clarity to the roles and duties of financial service providers to their clients. 2. Reduce the risks attached to inadequate record keeping practices. 3. Increased consistency in the approach and business practice with regards to record keeping. 4. Increased certainty for on-site and off-site supervision. 5. Increased compliance with the record keeping expectations of the Authority. 6. Improved clarity on types of records to be kept and improvements on the turn-

	Costs	Benefits
	converted to electronic records. 6. Cost of translating records. 7. Cost of implementing systems to mitigate increased cybersecurity risks.	around times to the Authority's request for records. 7. Better ability to locate and provide the Authority with requested records. 8. Possible cost savings as a result of converting to electronic records or maintaining records overseas. 9. Increased certainty on electronic records resulting in less need for queries to the Authority. 10.Reduced risk of destruction or loss of records.

F. Comments and Consultation

30.The Authority seeks consultation through written comments and representations from the private sector associations concerning

- Amendment to the SOG on the Nature, Accessibility, and Retention of Records.

31.The Authority must receive representations by 17H00, 24 March 2017.

32. Comments and representations must be addressed to

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33. The Authority shall have due regard to any representation made by the private sector associations and industry stakeholders. The Authority shall provide a written response collating the feedback received and the Authority's position on this feedback. This response shall be copied to all relevant private sector associations only.