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# Statement of Guidance

## Licensing of Unrestricted, Restricted and Nominee Trust Companies

### 1. Statement of Objectives

In order to ensure that the Cayman Islands retains its reputation as a leading and well regulated international financial centre, it is imperative that all entities required to be licensed under the regulatory laws are licensed in accordance with a firm and clearly defined licensing policy. The Authority recognises that high standards of licensing are the necessary foundation for effective regulation and supervision. Therefore, there is a need for rigorous criteria to be applied when processing all applications for licenses.

### 2. The Policy

#### 2.1 Fit and Proper Direction and Management

##### 2.1.1 Fit and Proper Criteria

It is a requirement of trust companies to show that they are controlled and managed by persons who are fit and proper. In determining whether a person is fit and proper relevant circumstances will be considered and will include that persons possess:

(a) Honesty, integrity and reputation: professional behaviour towards customers, creditors, other financial service providers and regulators. A lack of cooperation, candour and honesty can be interpreted as a lack of integrity as it may be construed as an attempt to conceal deficiencies and/or a lack of knowledge of the business conducted. The Authority will also assess the previous criminal record of all persons who wish to



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fill roles as shareholders, directors, or senior officers of a licensed entity.

(b) Competence and capability: this refers to knowledge of the business, efficiency, reliability, proper organisation of the business, and compliance with statutory rules, regulations and where appropriate, non-statutory codes of practice.

(c) Financial Soundness: this relates to the ability of the individual to conduct their financial affairs in an appropriate manner.

Further details on the criteria the Authority will use to determine whether persons are fit and proper are set out the Authority's guidelines on fitness and propriety<sup>1</sup>.

2.1.2 In assessing competence the Authority will direct its primary attention to two areas – qualifications and experience. It will take into account the qualifications and experience of management, and where appropriate that of directors and controllers and any persons subsequently appointed. In conducting its assessment the Authority will take into account any relevant professional qualifications and any recognised industry-based courses and examinations.

2.1.3 The Authority expects individuals, directors, officers and managers of the trust company to have demonstrated technical ability and a sound knowledge of the business activities.

2.1.4 The Authority recognises the difficulty of balancing education and experience and will look particularly for positive evidence of the good standing and experience of the applicant from those in a position to assess this. Weight will be given to the support of the application by

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<sup>1</sup> Available on the Authority's website [www.cimoney.com.ky](http://www.cimoney.com.ky)



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those who are themselves acknowledged to be experienced and in good standing by others in the market place.

2.1.5 Each person should be considered in relation to their proposed role. It is therefore possible that a person can be fit and proper for one position but not for another.

2.1.6 The fit and proper test is both an initial test at the time of granting the licence and an on-going test in relation to the conduct of the business and the entity's relationship with the Authority. All trust companies are obligated to inform the Authority of any development that may cast doubt on the continuing fitness and properness of an individual, or that would impact on the interests of the trust company's existing and potential customers.

## 2.2 Ownership and Control

2.2.1 The disclosure to the Authority of the beneficial ownership and control is required upon application. Once a licence is issued, all changes in ownership or control require the Authority's prior approval.

2.2.2 The responsibility for the prudent and successful conduct of the licensees' business rests with the directors and management.

2.2.3 The business of all trust companies should be conducted by at least two individuals. A minimum of two active directors is required. On a case-by-case basis the Authority may require that more than two directors be appointed. Any change in directors, officers and managers must be approved by the Authority.



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## 2.3 Financial Resources

2.3.1 The importance of the capital strength of financial services providers is in terms of both capital adequacy and availability of operational capital.

2.3.2 Every trust company shall commence operations with a prescribed minimum net worth as required by the Banks and Trust Companies Law. Where appropriate the Authority may require additional capital to ensure that net worth is sufficient for the nature of the business.

2.3.3 The Authority must be satisfied that the trust company presently has, and will continue to have, financial resources (whether actual or contingent) that are adequate for the nature and scale of the business.

## 2.4 Professional Indemnity Insurance

The Authority expects licensees to carry a level of protection against potential legal actions so that the licensee can continue to carry out its obligations to remaining clients.

## 2.5 Internal Systems and Controls

All trust companies must have in place compliance and procedural manuals and internal controls to ensure compliance with applicable laws and accepted standards regarding effective management.

## 2.6 Record Keeping

Management information should be both timely and accurate and supported by complete and accessible records. Such records must be



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accessible by the Authority and where located overseas, the Authority should be notified of the location. Licensees should consult the Authority's Statement of Guidance on Nature, Accessibility and Retention of Records for further guidance on the Authority's expectations on record keeping<sup>2</sup>.

## 2.7 Know Your Customer Policy

This principle requires licence holders to know their customers, to enquire as to the nature of the business and activity of the customer, and to monitor and report any suspicious activities. All licence holders must comply with the Money Laundering Regulations (2003 Revision) or any subsequent amendments and revisions.

## 2.8 Compliance with Industry Standards

All licensees are expected to be in compliance with the standards of the trust industry and, where such standards exist, any other industry in which the licensee may be involved as a result of its business activities. This will assist in ensuring that business is carried out in conformance with accepted professional standards.

## 2.9 Track Record and Viability

### 2.9.1 Business Plan

2.9.1.1 A detailed business plan covering the first two years of projected business activity is required. Any licence granted is based on the information submitted, which should be precise, complete and accurate. The information should identify assumptions and qualify accordingly. Any changes therein must be notified to the Authority.

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<sup>2</sup> This and other Statements of Guidance are posted on the Authority's website [www.cimoney.com.ky](http://www.cimoney.com.ky)



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2.9.1.2 The business plan should contain details of the reasons for the business to establish an operation in the Islands, the short and long-term objectives and how these will be achieved. The applicant must be able to demonstrate that it has adequate resources, in terms of manpower, systems and expertise, to meet its objectives. If the entity is a branch or subsidiary, the Authority will require written verification from the parent of its commitment to the subsidiary.

#### 2.9.2 Financial Statements

- a) All licensees are required to have their accounts audited annually by an auditor approved by the Authority.
- b) The application should contain the financial statements of the applicant for the preceding two years where applicable.

#### 2.10 Separation of Assets and Other Property

Licensed trust companies must have proper arrangements in place to account for and keep all assets and other valuables that it has received in its capacity as trustee duly separated from the trust company's own assets and liabilities.