

**CAYMAN ISLANDS MONETARY AUTHORITY**

# **Regulatory Handbook**

**APPENDICES I**



**Cayman Islands Monetary Authority**

P.O. Box 10052

80e Shedden Road

Elizabethan Square

Grand Cayman

Cayman Islands KY1-1001

Telephone: 345 949 7089

Facsimile: 345 949 2532

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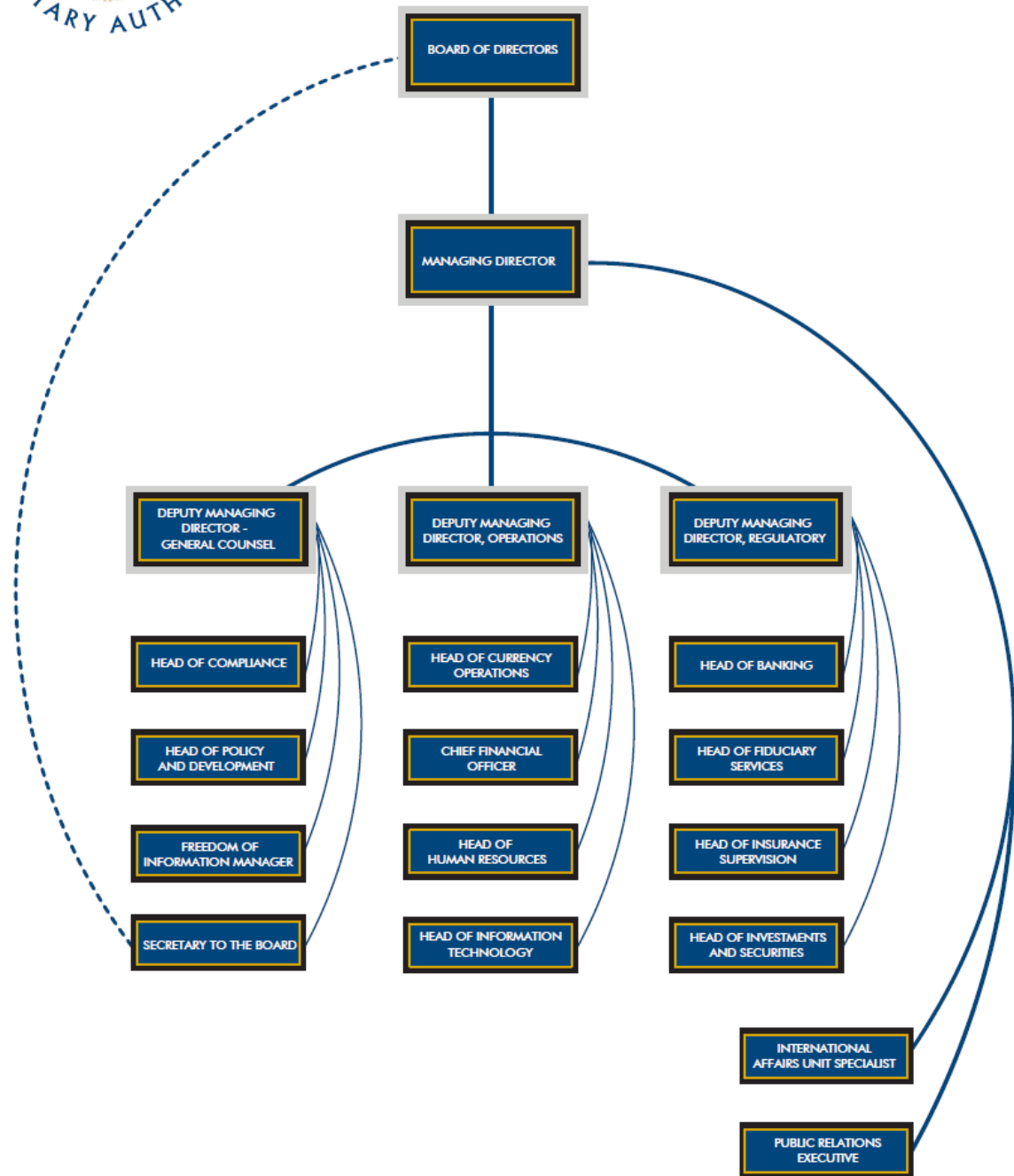
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# STRUCTURE AND RESPONSIBILITIES

## C1 – Organisational Structure

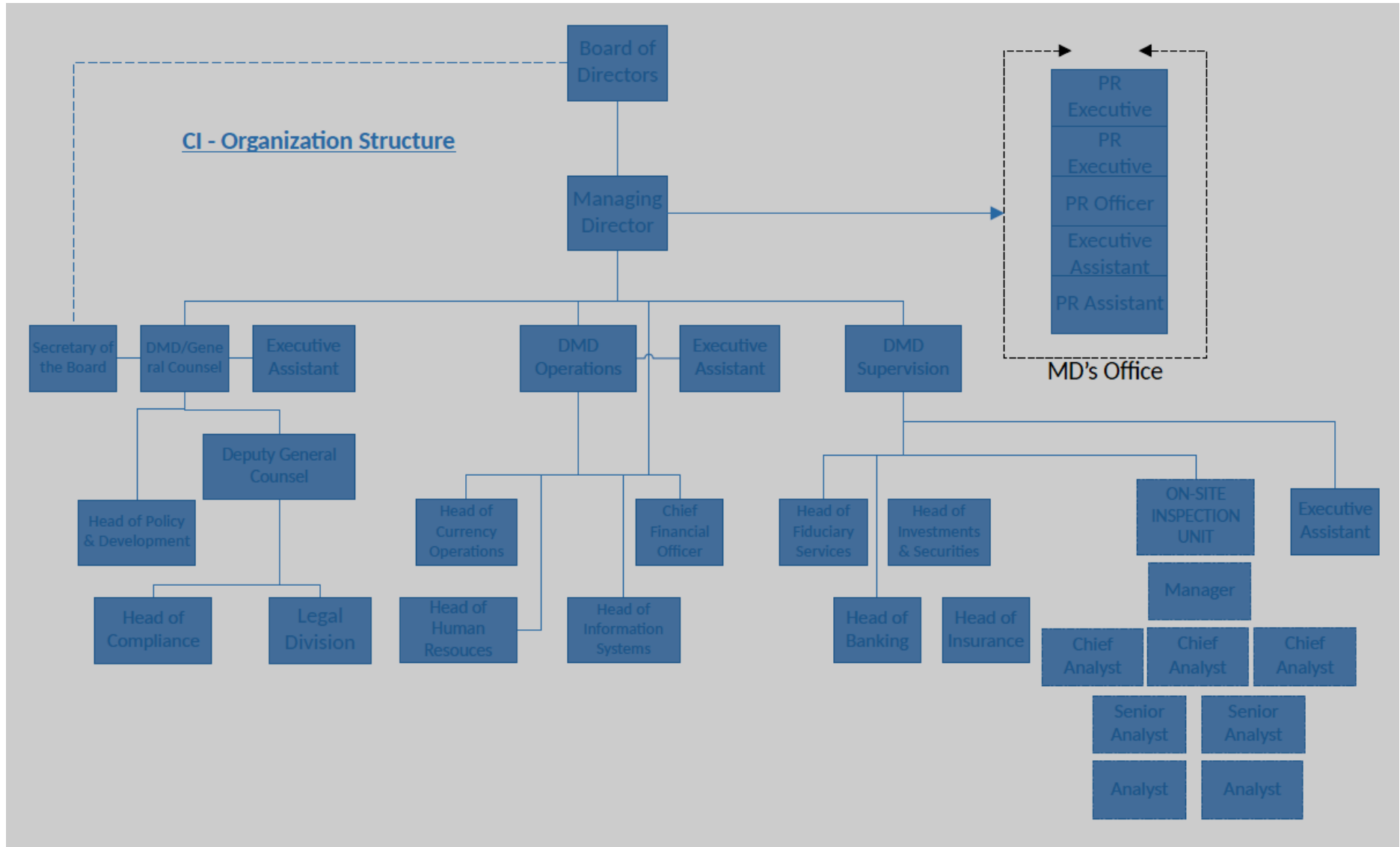


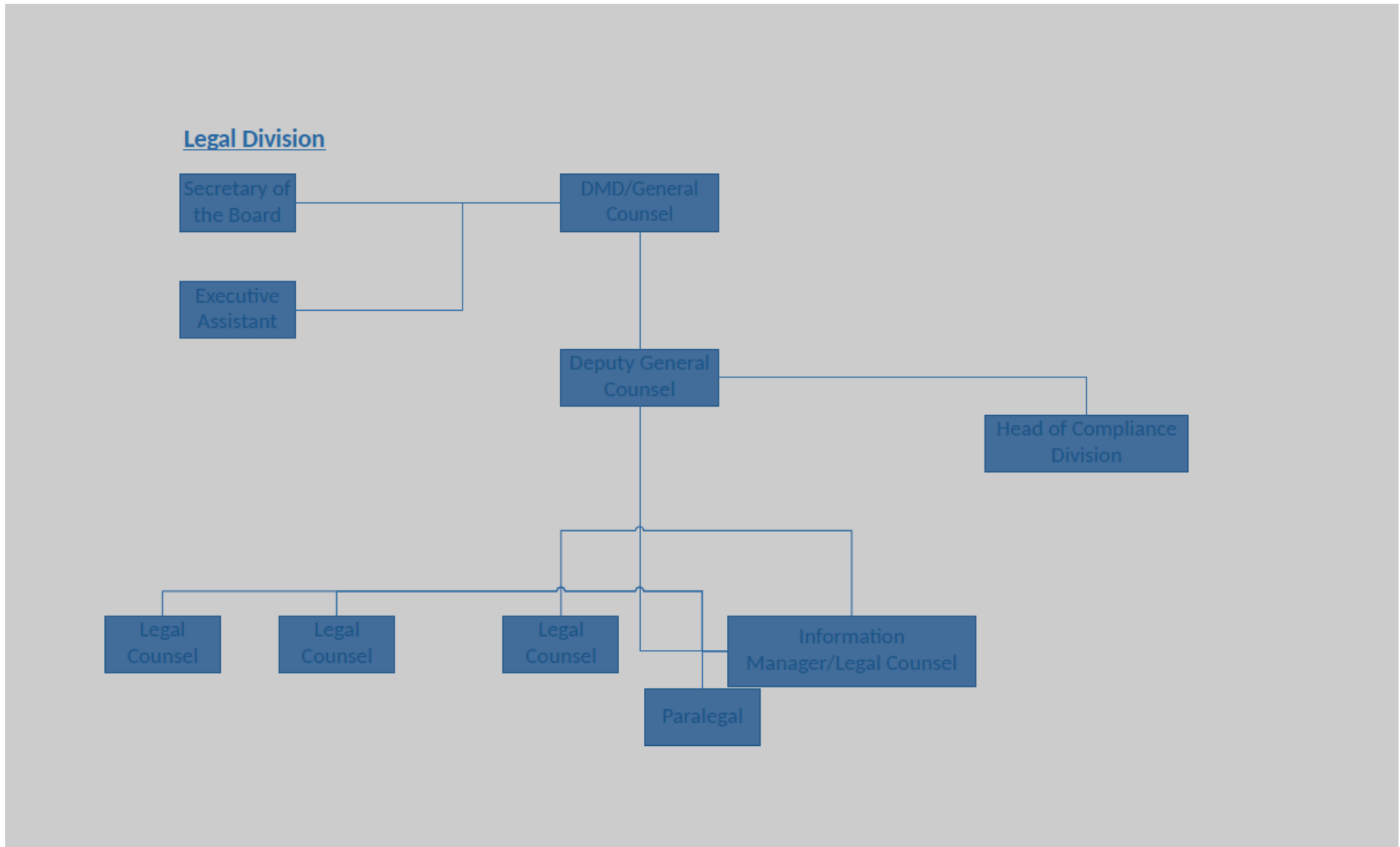
# ORGANISATIONAL CHART



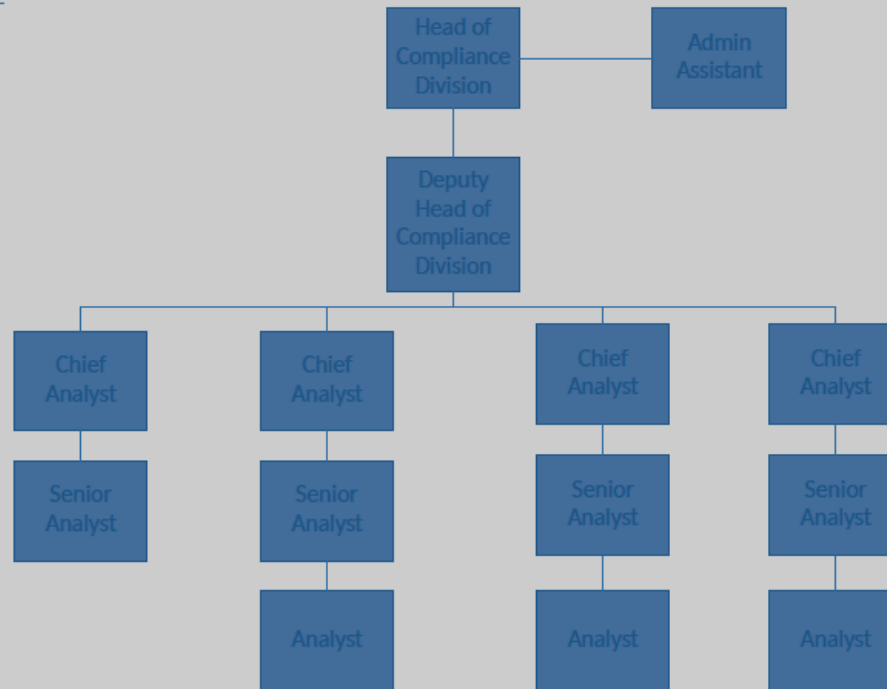
# STRUCTURE AND RESPONSIBILITIES

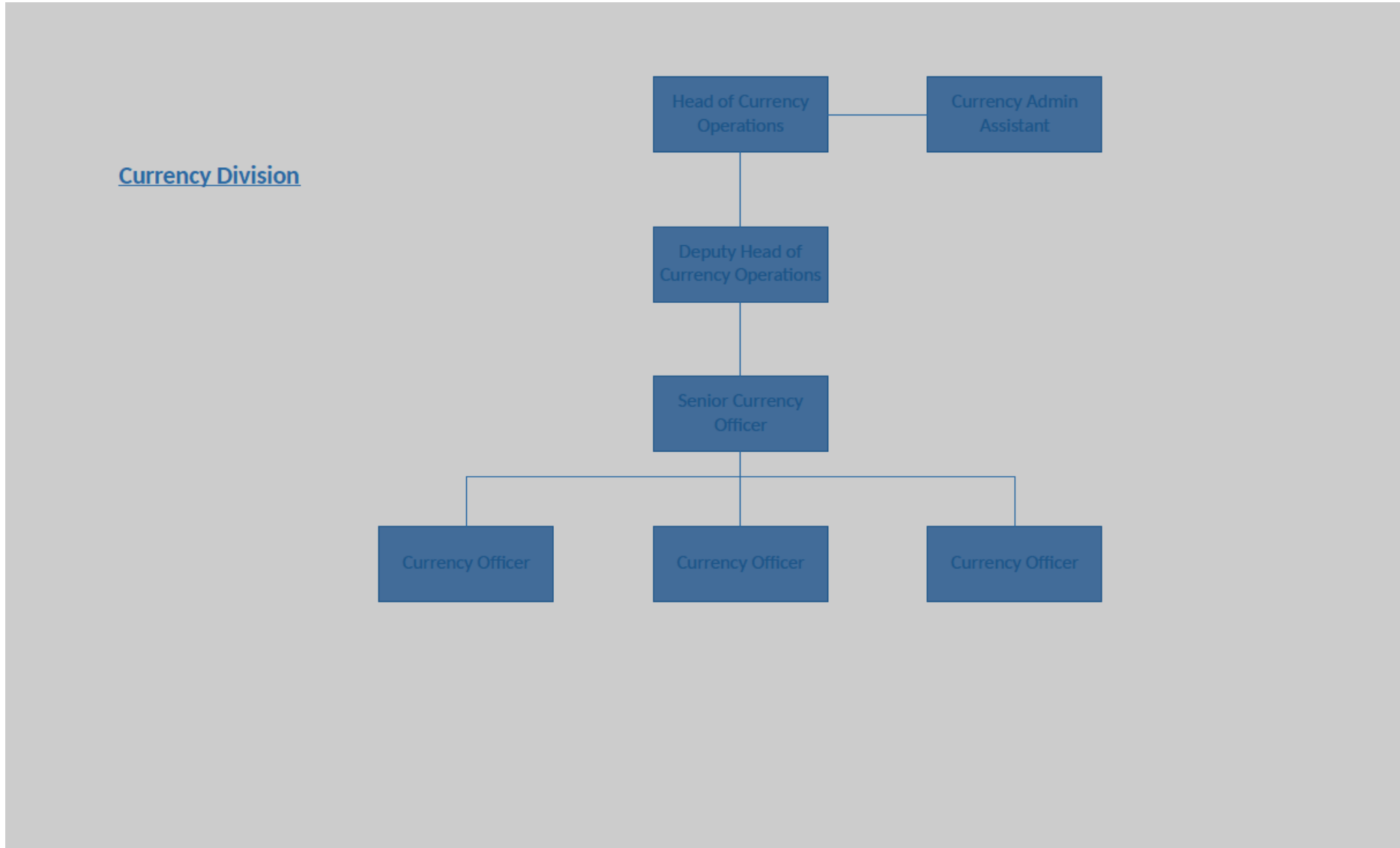
## C1 – Organisational Structure





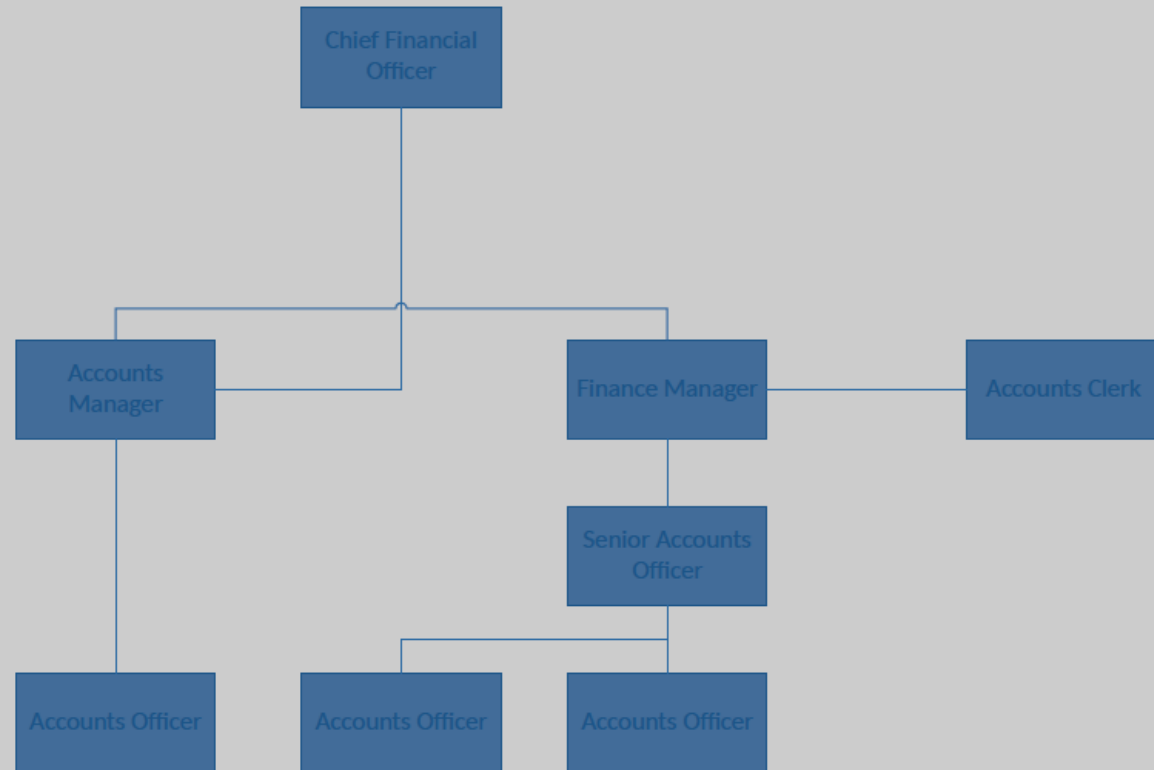
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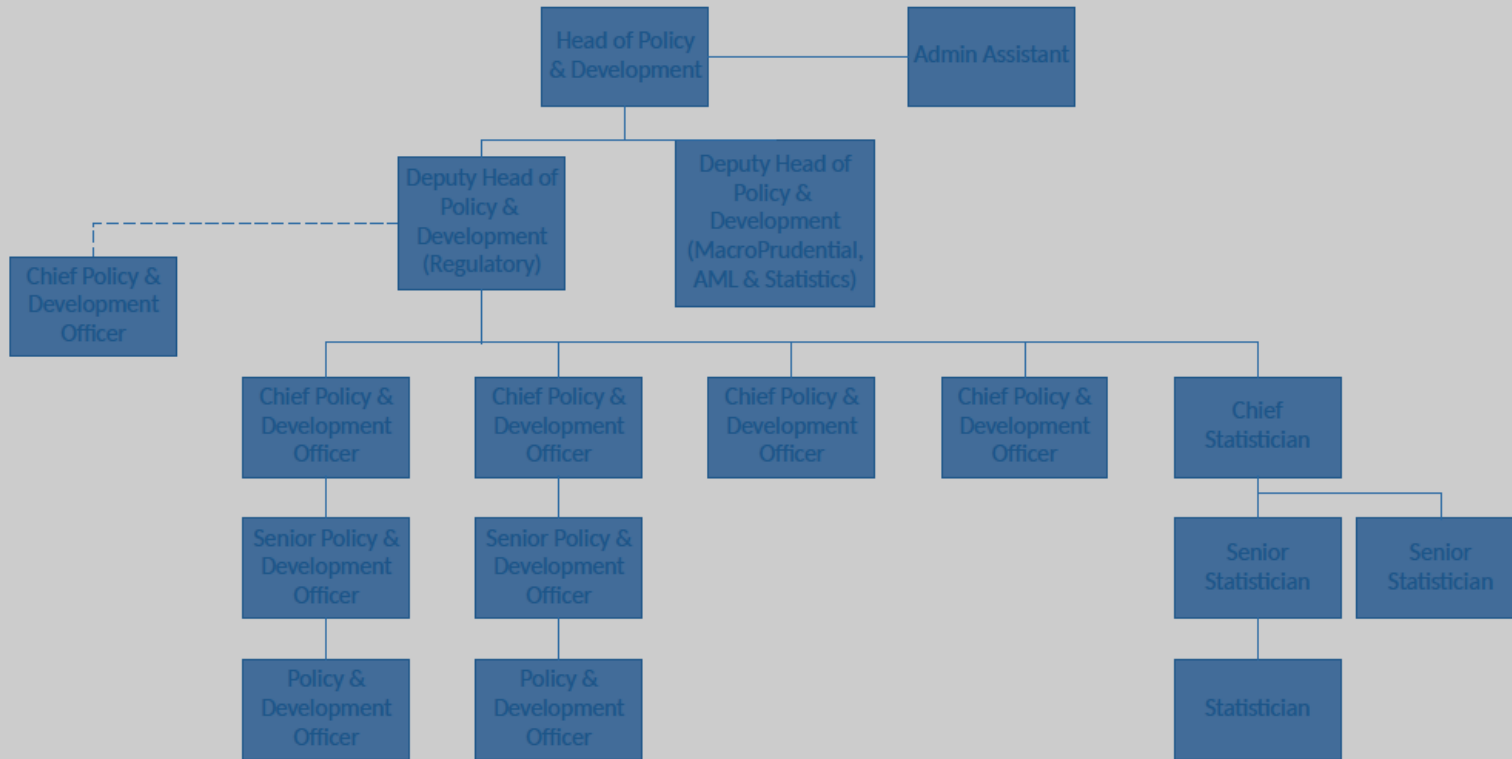


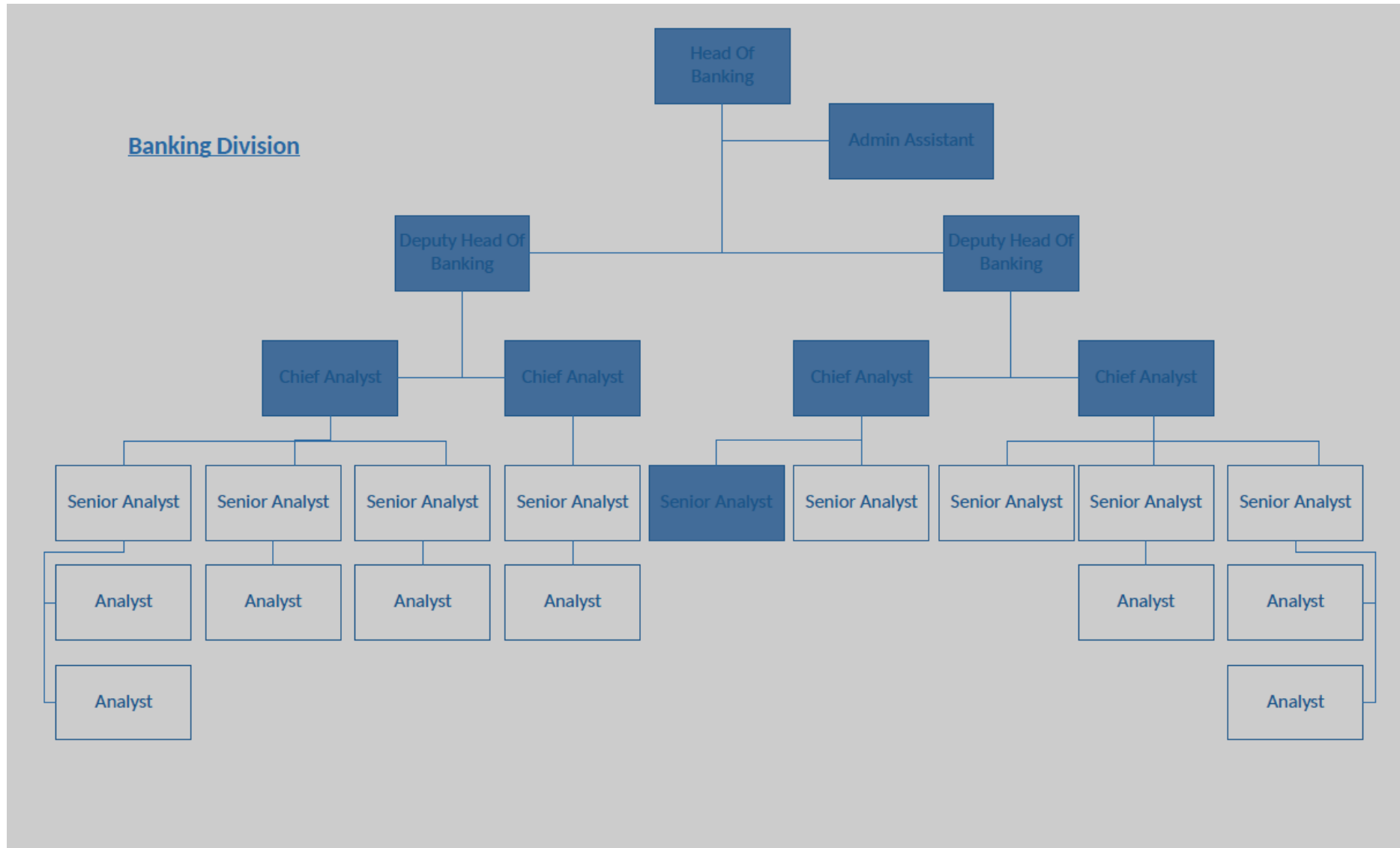


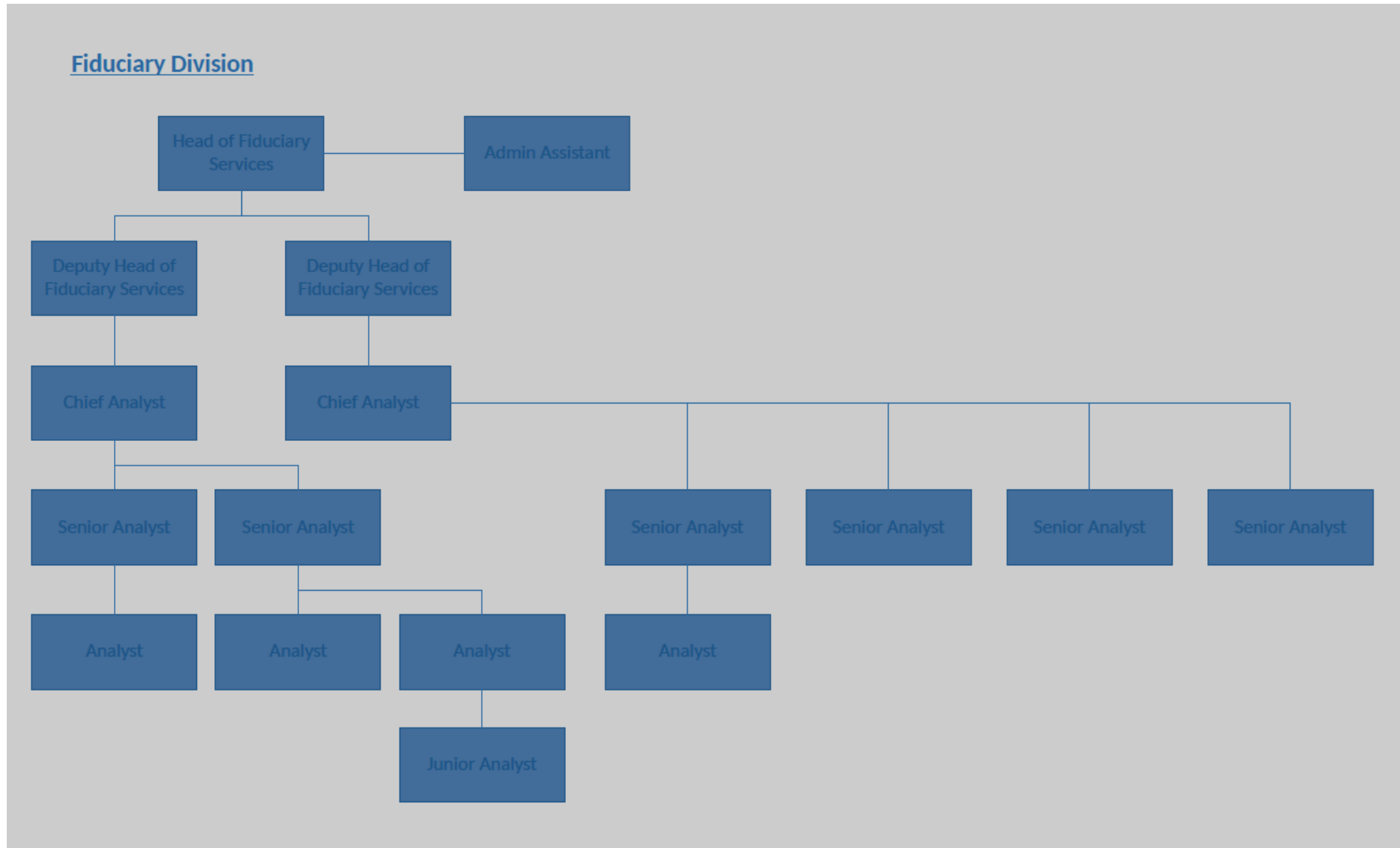
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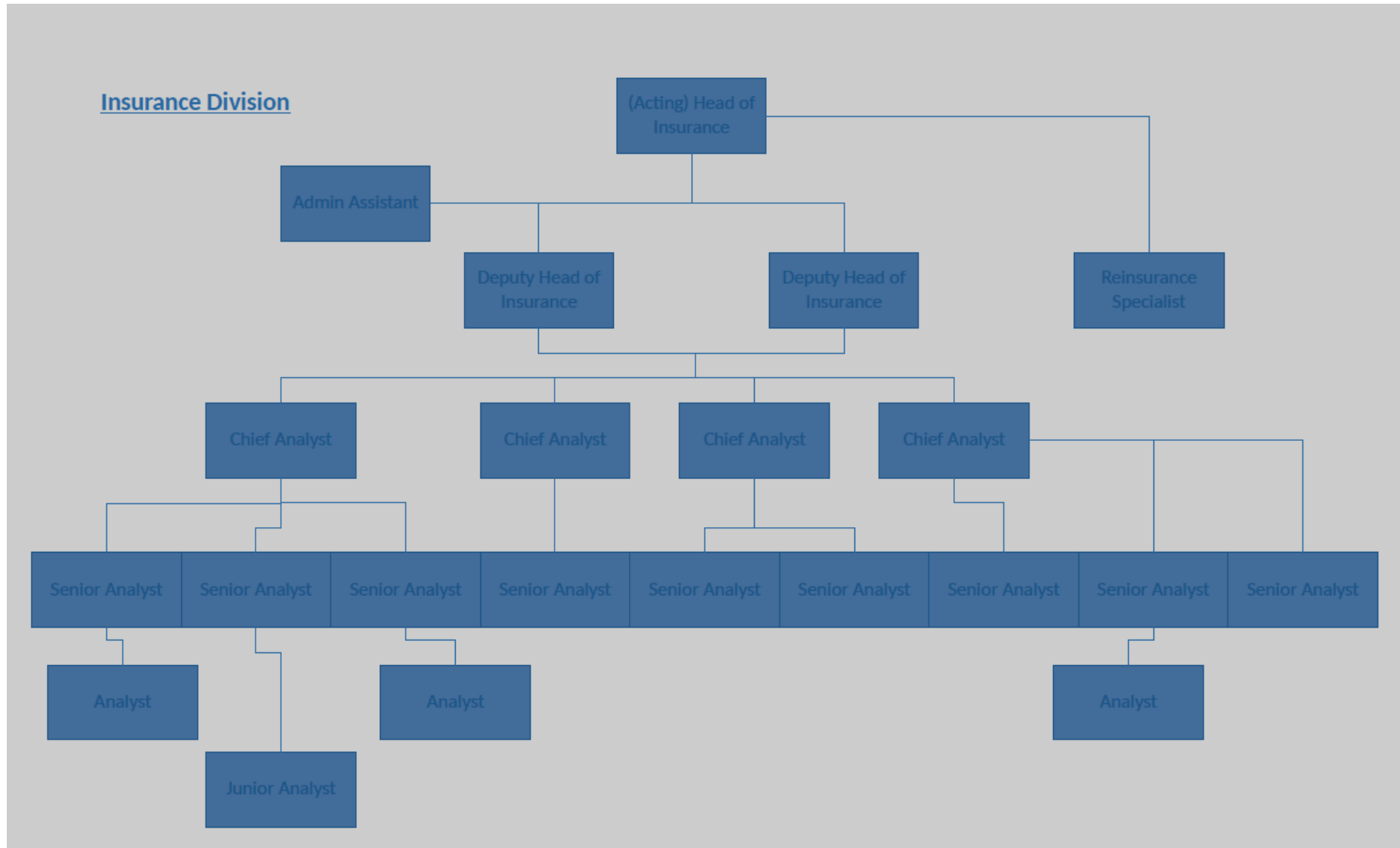


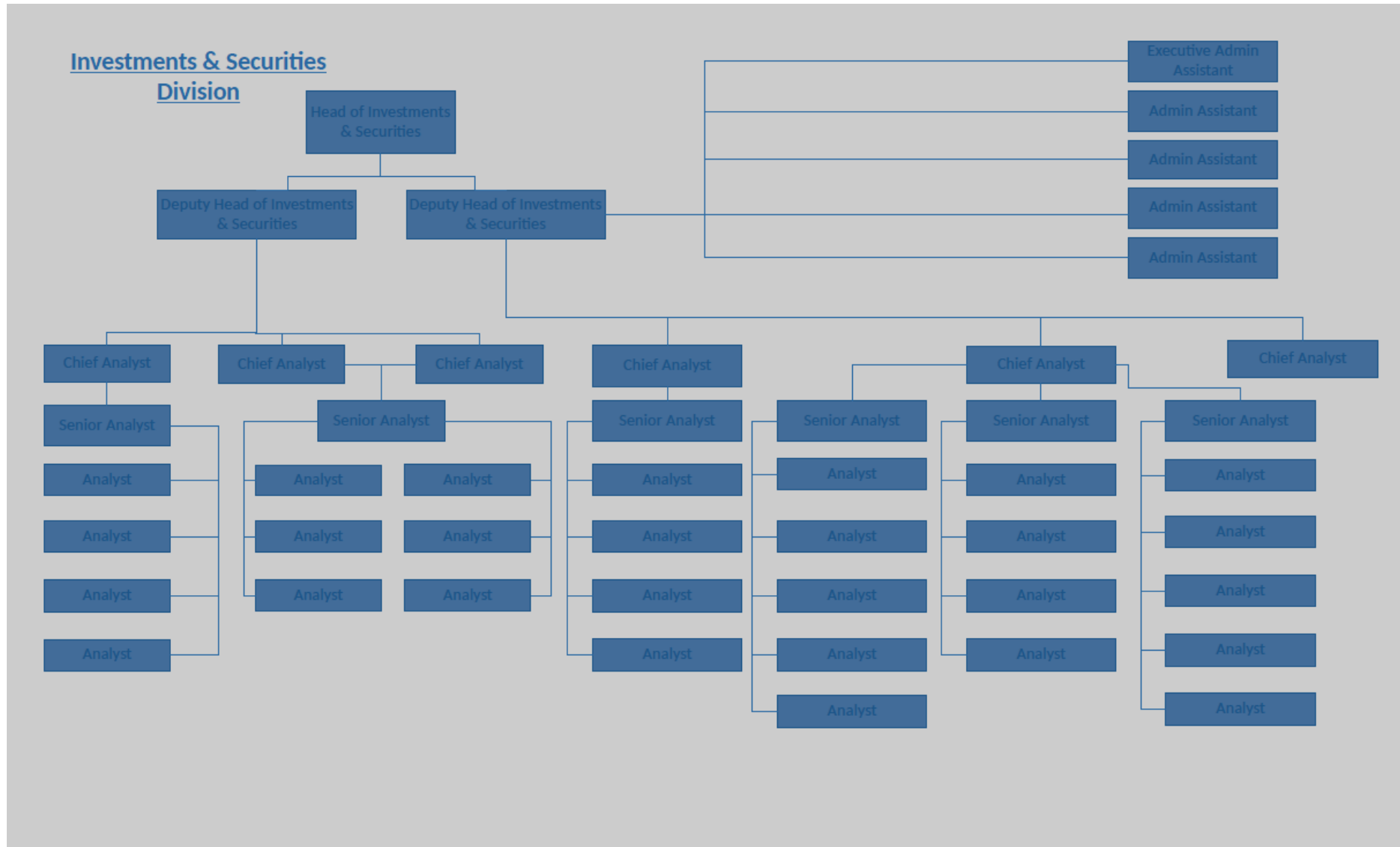
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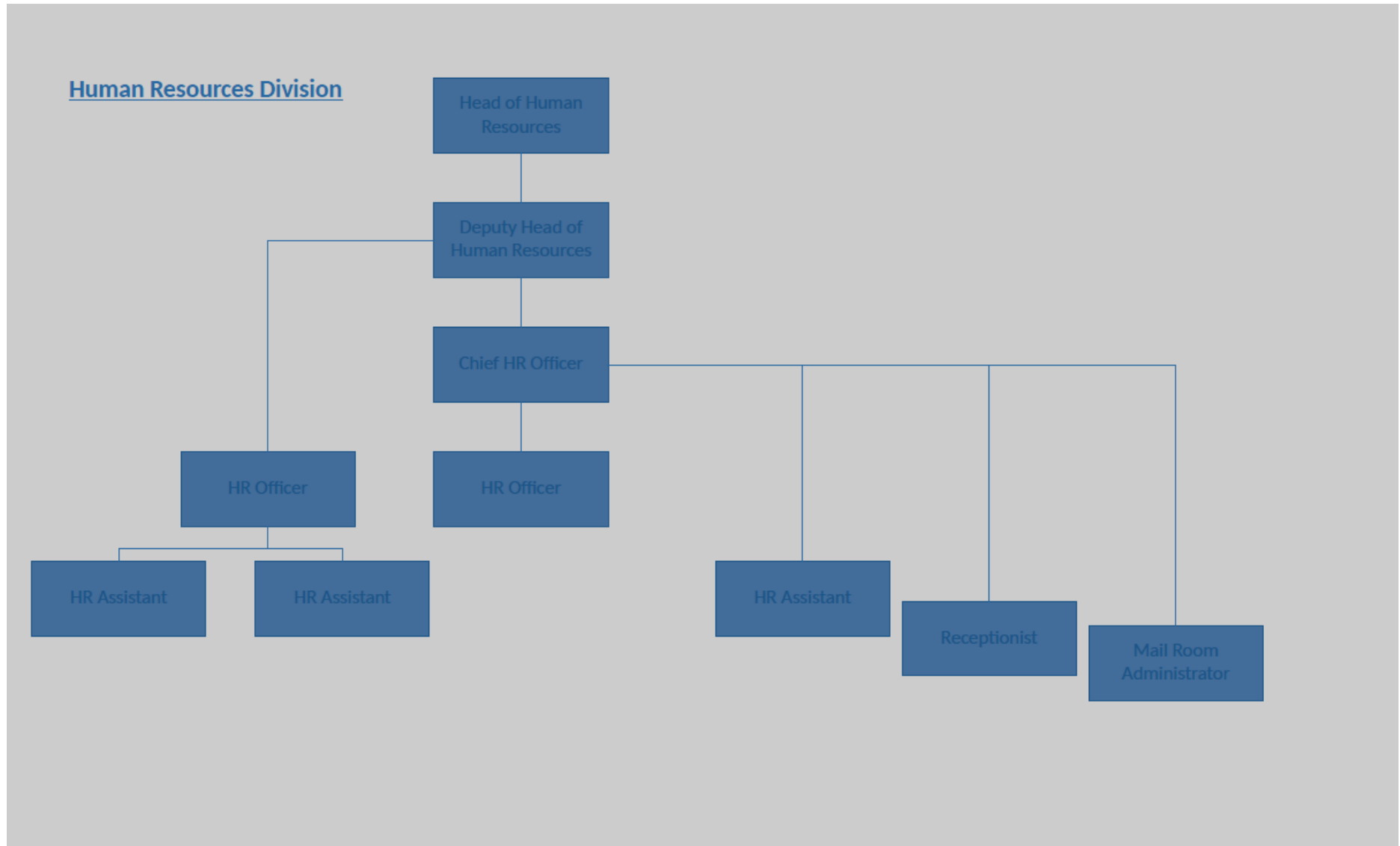


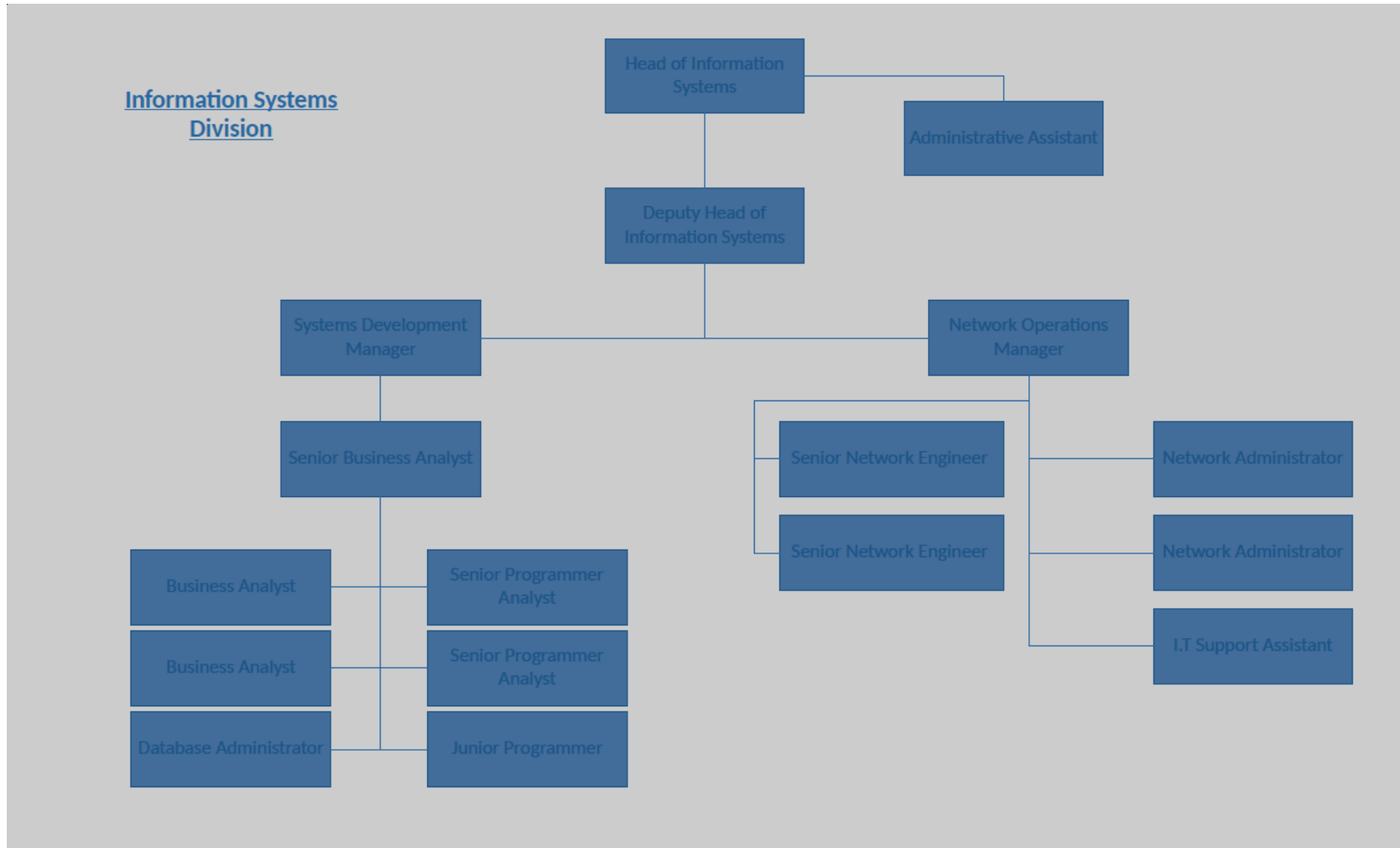














## **C2 - Board of Directors' Code of Conduct**

1. The Directors are under a legal obligation at all times to act honestly, in good faith, with care and skill and in the best interests of the Authority.
2. The Authority expects professional and ethical conduct from its Directors. They should treat one another, officers and staff with openness, respect, courtesy and co-operation. This includes proper use of authority and appropriate behaviour when acting as a Director.
3. Directors must be loyal to the Authority and follow the conflict of interest provisions of the Monetary Authority Law.
  - Where a legal conflict of interest arises, appropriate action should be taken immediately to disclose the conflict to the Board and to withdraw from any Board consideration of the matter.
  - Directors must not use for personal gain confidential/insider information gained while a Director.
  - Directors should not put themselves in a position where they may be involved in or supporting activities which conflict or may conflict with the Authority's position or interests.
4. In reaching decisions, Directors must:
  - act prudently and consider what is in the best interests of the Authority alone.
  - take into account all relevant matters and make decisions on an informed basis.
  - ignore personal or other factors which might improperly affect their judgement.
5. If a Director disagrees with the decision of the Board properly reached, he:
  - must publicly abide by and support the decision, or resign.
  - must not disclose his dissent publicly while still a Director.
6. Directors shall not interfere with or exercise authority over officers or staff of the Authority, except where expressly authorised by the Board.
7. Communications with third parties on behalf of the Board will generally be through the Chairman, or Deputy Chairman (once appointed) in his absence. Other Directors who are interacting with third parties shall emphasise that they do not speak for the Authority or Board, unless specifically authorised to do so by the Board.
8. Directors shall not discuss or disclose confidential matters or information or documents (including those held in electronic form) relating to the Authority, officers, staff, licensees, clients of licensees or otherwise of which they

become aware as Directors, except where expressly authorised by the Board or compelled by law.

9. A Director shall on ceasing to hold office immediately destroy or return to the Secretary to the Board all confidential documents (including those held in electronic form) in their possession, custody or control as a Director that belong to or relate to the Authority, officers, staff, licensees, clients of licensees or otherwise.
10. Directors shall exercise good judgement in accepting hospitality from those who have an interest in the outcome of decisions of the Authority. Gifts, other than customary and reasonable ones at holiday season, should be declined.
11. Directors shall only comment on the performance of officers or staff pursuant to established performance review procedures except where such performance or conduct is relevant to an item being discussed at a Board meeting.
12. Directors shall discourage direct communication by staff who attempt to bypass administration and shall encourage staff to utilise reporting lines within administration to bring their concerns to the Board.
13. Directors shall be familiar with:
  - The Monetary Authority Law.
  - Cayman Islands regulatory laws.
  - The Authority's regulations, rules and policies.
  - The Authorities organisational and management structure.
  - The rules of procedure for proper conduct of meetings.

They should also promptly review materials presented to the Board. This will enable decisions of the Board to be made in an informed, efficient and timely manner.

14. Directors shall attend meetings on a regular and punctual basis. If they are unable to attend they should advise the Secretary. The Monetary Authority Law provides that the office of a Director is automatically vacated if a member misses three consecutive meetings of the Board without the approval of the Chairman.

### C3 - Conflicts of Interest Code

1. Each Director shall immediately and in each January thereafter disclose in writing to the MD or, in the case of the MD, the Chairman Arrangements with or Holdings in any entity that he is aware has entered into or proposes to enter into any Agreement with the Authority or that is a Regulated Entity. Disclosure of Holdings of less than 5% of the issued voting Holdings of an entity are not required if the entity is listed on a stock exchange. Such written disclosures are held by the Chief Financial Officer and the Head of Human Resources, and are subject to inspection by the auditors of the Authority during office hours only.
2. A Director with a Disclosable Interest shall notify the chairman of the meeting at which the relevant matter is to be considered. The Director shall withdraw unless requested by the chairman of the meeting, after consultation with the other Directors present, to remain to assist the meeting, and may not vote on the matter. In all other cases, the Director will advise the MD or, in the case of the MD, the Chairman immediately he becomes aware that he has a Disclosable Interest with respect to a matter before the Authority.
3. The MD or Chairman, as the case may be, shall notify a Director immediately he becomes aware of a matter before the Authority that may give rise to a conflict of interest for that Director.
4. While any material matter relating to or Agreement with an entity is before the Authority and of which a Director is aware, he shall not acquire or dispose of any Holdings in such an entity.
5. All Disclosable Interests shall be kept confidential by the MD and Chairman and shall be disclosed to other Directors only with the consent of the relevant Director or as required by this Code or by law.
6. The disclosure required by paragraph 1 and the prohibitions set forth in paragraph 4 extend to entities controlled by Directors.
7. Issues arising from the application of the above-policies shall be referred to the ethics committee of the Board of Directors.
8. In this Code:
  - 8.1. "Agreement" includes any lease or contractual arrangement and any variation or termination thereof;
  - 8.2. Subject to 8.10 "Arrangements" means all directorships, offices, employment, management, consultancy or other similar arrangements;
  - 8.3. "Chairman" means the chairman of the Authority;
  - 8.4. Subject to 8.10 "Disclosable Interest" means an interest disclosable under paragraph 1;

- 8.5. “Control” means the right to elect a majority of the directors or to pass an ordinary resolution of shareholders or otherwise to exercise directly or indirectly de facto control over the entity;
- 8.6. “Holdings” means any ownership or debt interest.
- 8.7. “in writing” includes the completion of a notice of interests form, which may be amended from time to time;
- 8.8. “MD” means the managing director of the Authority;
- 8.9. “Material matter” means any application for licence or registration or significant variation thereof, any suspension, cancellation or revocation of licence or registration or any enforcement or analogous action;
- 8.10. “Regulated Entity” means a licensee or registrant or applicant for licence or registration;
- 8.11. Personal arms’ length banking, investment management/advisory, broking and insurance relationships shall not be considered “Arrangements” or “Disclosable Interests”.

## C4 - The Management Committee Code of Conduct

Members of the Management Committee (MC) are entrusted by the Board of Directors (Board) of the Cayman Islands Monetary Authority (CIMA) with responsibility for ensuring that decisions are taken by reference to Board approved policies and procedures. Members of the MC require personal and professional conduct that meets the highest standards. Members have adopted the following Code of Conduct, which is intended to provide guidance on ethical standards in connection with, or having a bearing on, their status and responsibilities in the MC. The standards set out in this Code also apply to Alternate Members, who perform their functions under the authority of their supervisor (Member).

1. Members should observe the highest standards of ethical conduct. In the performance of their duties they should at all times act honestly, in good faith, with care and skill and in the best interests of the Authority.
2. The Authority expects professional and ethical conduct from the members of the MC. They should treat one another, officers and staff with openness, respect, courtesy and co-operation. This includes proper use of authority and appropriate behaviour when acting as a Member of the MC.
3. In reaching decisions, Members must:
  - act prudently and consider what is in the best interests of the Authority alone.
  - take into account all relevant matters and make decisions on an informed basis.
  - ignore personal or other factors which might improperly affect their judgement.
4. In performing their duties, Members will carry out their responsibilities to the exclusion of any personal advantage. Members should avoid any situation involving a conflict, or the appearance of a conflict, between their personal interests and the performance of their official duties. If such a conflict arises, Members should promptly inform the Managing Director or Deputy Managing Director and withdraw from any participation in the decision-making process connected with the matter.

If the conflict is potential rather than actual, Members should seek the advice of the Managing Director or Deputy Managing Director about whether they should remove themselves from the situation that is creating the conflict or the appearance of conflict.

5. If a member disagrees with the decision of the MC properly reached, publicly he/she:
  - must abide by and support the decision, or resign.
  - must not disclose his dissent.
6. Members are responsible for protecting the security of any confidential information provided to, or generated by, the CIMA

7. Members shall not discuss or disclose confidential matters or information relating to the Authority, officers, staff, licensees, clients of licensees or otherwise of which they become aware as Members, except where expressly authorised by the MC or compelled by law.
8. Members should make written disclosure to the Managing Director or Deputy Managing Director of any financial or business interests of their own or their immediate family members. The Managing Director or Deputy Managing Director shall bring any unresolved concerns regarding a conflict of interest between a Member's holdings and the performance of the CIMA duties to the attention of the Board.
9. Members should not accept favours, fees or gifts from regulated institutions or the institutions staff, professional companies or the general public, including commissions, special discounts or other forms of compensation, in order to avoid the appearance of improper influence on the performance of their official duties. All gifts received without prior notification from the sender must be declared immediately to the Managing Director or in his/her absence to the Deputy Managing Director the MC, who will deal with the matter appropriately.
10. Members must exercise discretion in accepting hospitality from any relevant organisations and professional advisers. Routine business lunches are good for relationships and unlikely to give grounds for suggestions of undue influence unless they become frequent or lavish. It may also be appropriate to accept invitations involving receptions for large numbers of people, which provide opportunities for networking. However, attending expensive or exclusive sporting or cultural events can draw criticism and must not be accepted without discussion of all the circumstances with the Managing Director. You should record these

discussions in writing and agree the record with the Managing Director against the possibility of later questioning.

For clarification, you should expect to turn down an invitation when you and your partner are the only guests, or where the host's party is only six or eight, and where you know the price of the tickets and accompanying fare is likely to exceed CI\$100 per head.

Invitations should definitely be refused if they could be construed by a critic to be unusual or to risk creating a sense of obligation to the host or bias in their favour (e.g. because of the circumstances of the invitation, or cost or rarity value of the event).

More generally, in deciding whether it would be appropriate to accept invitations, you should bear in mind that the CIMA must be able to demonstrate that it follows best practice as a public regulatory body. You, as well as the CIMA, will want to demonstrate that your actions are above reproach. The following should guide you:

- Any invitation that is purely or mainly social and where business is not expected to be discussed should be reviewed very carefully.
- You should not hesitate to ask the host for further information about the event (e.g. cost) in order to reach a decision, using these guidelines as the reason.
- If you have any doubts, play safe and decline.

Each Head of Department should maintain a record of hospitality offered to and accepted by colleagues within the department, especially documenting the reasons for all less than straightforward decisions, so you and we can demonstrate an open and proper process was followed. The Managing Director is available to offer advice over the appropriateness of accepting particular invitations but the responsibility lies with the Head of Department.

11. Members shall attend meetings on a regular and punctual basis. If they are unable to attend they should advise the designated Secretary to the Committee.
12. Members shall be familiar with:
  - The Monetary Authority Law.
  - Cayman Islands regulatory laws.
  - The Authority's regulations, rules and policies.
  - The Authority's organisational and management structure.
  - The rules of procedure for proper conduct of meetings.

They should also promptly review materials presented to the MC. This will enable decisions of the MC to be made in an informed, efficient and timely manner.

13. Members who leave the employment of the CIMA should not use or disclose confidential information known to them by reason of their service with the CIMA, unless subpoenaed by the court, and should not contact Members or other CIMA employees (other than through official channels) to obtain confidential information.

## **C5 - Paper By Division**

### CONFIDENTIAL

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MEETING # \_\_\_\_\_

ITEM # \_\_\_\_\_

### Paper by the (NAME OF DIVISION)

---

#### Issue

#### Background

#### Regulatory Considerations

#### Governance

#### Recommendation

The (Name of Division) recommends that the Cayman Islands Monetary Authority adopt the following.

The Cayman Islands Monetary Authority hereby...

It is further recommended that the Executive Secretary to the Board be authorised...

Name  
Division  
Date



## **C6 - Paper By The Managing Director**

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MEETING # \_\_\_\_\_

ITEM # \_\_\_\_\_

### Paper by the Managing Director

---

#### Issue

#### Background

#### Regulatory Considerations

#### Governance

#### Recommendation

The Management Committee recommends that the Board adopt the following recommendation(s)

The Cayman Islands Monetary Authority hereby .....

The Cayman Islands Monetary Authority hereby authorises the Executive Secretary to the Board

Cindy Scotland  
Managing Director

Date

**C7a - Extract Board Submission**

**CONFIDENTIAL**

**BOARD EXTRACT**

FROM MINUTES OF THE CAYMAN ISLANDS MONETARY AUTHORITY  
EXECUTIVE COMMITTEE OF THE BOARD MEETING

TO: Managing Director, Cayman Islands Monetary Authority

**THE FOLLOWING EXTRACT FROM MINUTES OF THE EXECUTIVE  
COMMITTEE OF THE BOARD ITEM NO ##### OF MEETING NO #####  
HELD ON ##### IS FORWARDED TO YOU FOR:**

ACTION

INFORMATION

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**EXECUTIVE SECRETARY TO THE BOARD**

**ITEM #**

**TITLE OF SUBMISSION**

Previous Reference: Item # ##### of Minutes of Meeting No  
###/##

The Executive Committee of the Board

**C7b - Sample Extract Board Submission****CONFIDENTIAL****BOARD EXTRACT**

FROM MINUTES OF THE CAYMAN ISLANDS MONETARY AUTHORITY  
EXECUTIVE COMMITTEE OF THE BOARD MEETING

**TO: Managing Director, Cayman Islands Monetary Authority**

The following Extract from Minutes of the Executive Committee of the Board Item No 002 of Meeting No 025/03 held on 11<sup>th</sup> September 2006 is forwarded to you for:

**ACTION**

**INFORMATION**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**EXECUTIVE SECRETARY TO THE BOARD**

**ITEM #002**

**XX Company**

The Executive Committee of the Board agreed to accept the surrender of the Category “B” Banking Licence and Trust Licence held by XX Company, a company incorporated in XX.

The Executive Committee of the Board granted approval to XX Company, a company incorporated in XX, for the issue of a Category “B” Banking Licence and a Trust Licence with exemption from the provisions of Section 16(2) of the Banks and Trust Companies Law (2013Revision) subject to the submission of the following:

- a) Certificate of Registration.
- b) Confirmation of consolidated supervision from the Federal Deposit Insurance Corporation and the XX Banking Department.

The Executive Committee of the Board granted approval for exemption from the provisions of Section 7(1) of the Banks and Trust Companies Law (2013 Revision), subject to the condition that they notify the Authority of:

- (i) Any change in control of the licensee.
- (ii) The acquisition by any person or group of persons of shares representing more than ten per cent of the issued share capital or total voting rights of the licensee's parent company.

The Executive Committee of the Board granted approval that the 2007 fees paid for the existing XX Company, be applied to the "new" XX Company based on the fact that it is the same entity carrying on the same business as the existing licensee.

The Executive Secretary to the Board was authorised to send a letter of approval forthwith.

## **C8a - Management Committee Extract**

### **CONFIDENTIAL**

#### **MANAGEMENT COMMITTEE EXTRACT**

**FROM MINUTES OF THE CAYMAN ISLANDS MONETARY AUTHORITY  
MANAGEMENT COMMITTEE MEETING**

TO: HOD NAME, DIVISION

The following Extract from Minutes of the Management Committee Item No ##### of Meeting No ##### held on ##### is forwarded to you for :

**ACTION**

**INFORMATION**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**EXECUTIVE SECRETARY TO THE BOARD**

**ITEM #**

**TITLE OF SUBMISSION**

Previous Reference: Item # ##### of Minutes of Meeting No ###/##

The Management Committee

## **C8b - Sample Management Committee Extract**

### **CONFIDENTIAL**

#### **MANAGEMENT COMMITTEE EXTRACT**

FROM MINUTES OF THE CAYMAN ISLANDS MONETARY AUTHORITY  
MANAGEMENT COMMITTEE MEETING

**TO: Head of Insurance, Cayman Islands Monetary Authority**

The following Extract from Minutes of the Management Committee Meeting Item No 007 of Meeting No MC026/06 held on 11<sup>th</sup> September 2006 is forwarded to you for:

**ACTION**

**INFORMATION**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**EXECUTIVE SECRETARY TO THE BOARD**

**Item 007**

**XX Insurance Company**

The Management Committee granted approval for the issue of a Class “A” Insurer’s Licence subject to receipt and approval by the Authority of the following:

- a) Certified copy of the Memorandum and Articles of Association
- b) Certificate of Incorporation
- c) Evidence of receipt of capital
- d) Satisfactory completion of the due diligence process
- e) Confirmation of Fronting Company
- f) Confirmation of Reinsurer

The licence may be issued when all outstanding requirements of the Law and elements of the proposal have been met.

## **C9 - Board Delegation of Powers to the Managing Director**

**19<sup>th</sup> September 2007**

**DELEGATION OF POWERS** by the Board of Directors (“the Board”) of the Cayman Islands Monetary Authority (“the Authority”) to the Managing Director of Authority (“the Managing Director”)

**WHEREAS** by virtue of Section 13(3) of the Monetary Authority Law (2013Revision), the Managing Director is entrusted with the day to day administration of the Authority to the extent of the authority delegated by the Board;

**AND WHEREAS** the Managing Director had been appointed as the Chief Officer of the Authority, pursuant to Section 47(2) of the Public Management and Finance Law (2013 Revision) (“the PMFL”);

**AND WHEREAS** pursuant to Section 47(3) of the PMFL the Board is required to delegate to the Chief Officer power to manage the Authority;

**AND WHEREAS** the Board desires to record in writing its delegation to the Managing Director/Chief Officer the powers of day-to-day administration and management of the Authority in accordance with Section 13(2) of the Monetary Authority Law and Section 47(3) of the Public Management and Finance Law;

The Board hereby delegates to the Managing Director/Chief Office to the extent permitted by the PMFL, the MAL and all other relevant laws the following powers and responsibilities:

1. The achievement of the Budget and Ownership and Purchase Agreements of Authority as approved by the Board.
2. The day to day administration and management of the Authority, including:
  - Personnel recruitment and management of staff in accordance with the Staff Handbook and all other related policies that may be approved by the Board from time to time.
  - Dismissal of all staff (except Deputy Managing Director) in accordance with the Staff Handbook and the Labour Law.
  - Supervision of and responsibility for the various divisions of the Authority in the carrying out of the regulatory, cooperative and advisory functions and the operations of the Authority in accordance with the Monetary Authority Law (2013Revision), the regulatory and other relevant laws and any relevant policies and procedures approved by the Board.
  - Supervision of and responsibility for the carrying out of the currency functions (including the investment of the reserves) of the Authority on behalf of the Cayman Islands Government.

- Notwithstanding the above, the Managing Director shall consult with the Board in the recruitment and termination of the Deputy Managing Director
3. Doing all acts and deeds as are necessary and possible promptly to implement decisions of the Board.
  4. Providing timely technical advice and guidance on matters affecting policy and strategy and their implementation in the Managing Director's scope of expertise and otherwise seeking such technical/professional advice as the Managing Director may deem necessary.
  5. Public relations and representation of Authority at local and international forums.
  6. Financial management and reporting in accordance with the Public Management and Finance Law (2013Revision) and with the policies and procedures approved by the Board.
  7. Execution and delivery for and on behalf on the Authority of any deeds, contracts, agreements or other instruments with value of up to CI\$99,999 in accordance with the signing authority set forth in the "Authorised Signatures of the Cayman Islands Monetary Authority".
  8. Responsibility for the functioning of the Management Committee and Executive Committee as outlined in the "Procedures for Dealing with Licensing and Supervisory Matters".
  9. Assignment of responsibilities within the Authority.
  10. Determining the day-to-day priority of the work of the divisions within the Authority in accordance with the Goals, Objects and Strategies of Authority and the Work Plan determined by the Board.
  11. Any other powers, duties and responsibilities that the Managing Director, by virtue of having executive responsibility for the day-to-day administration and management of the Authority, would normally be expected to undertake or would otherwise be implied by law as a consequence of holding that position.



## **EXTERNAL RELATIONS**

### **D1 - Dealing With Requests For Assistance From an Overseas Regulatory Authority (ORA)**

#### **A. Legislative Framework**

The responsibility of the Cayman Islands Monetary Authority (The “Authority”) to provide assistance to overseas regulatory authorities arise from the cooperative functions of the Authority under Section 6 (1) (c) of the Monetary Authority Law (2013Revision) (“the MAL”). See Appendix D1a attached. The scope of the duty is set out in more detail in sections 50 (3) to (8) and 51 of the MAL (Appendix D1b).

The Authority will generally assist an ORA in the exercise of its regulatory functions including the conduct of civil and administrative proceedings to enforce laws, regulations and rules administered by the ORA. It may also consent to the use of information shared for the purposed, the criminal investigation or prosecution of a charge which pertains to the contravention of laws and regulations administered by the ORA or to assist self regulatory organizations with surveillance and enforcement activities where it is involved in the supervision of conduct that is the subject of the request.

An ORA is defined in Section 2 of the MAL as “an authority which, in a country or territory outside the Islands, exercises functions corresponding to;

- a) any of the regulatory functions of the Authority; or
- b) any additional functions as may be specified in regulations including the conduct of civil and administrative investigations and proceedings to enforce laws, regulations and rules administered by that Authority”.

As no regulations have been enacted to date only paragraph (a) of the above definition is relevant for the purposes of these procedures.

Pursuant to Section 34 (9) of the MAL, (Appendix D1c) where the Authority is satisfied that assistance should be provided to an Overseas Regulatory Authority (ORA) the Authority may issue a direction to a person to provide specified information, produce specified documents or give specified assistance.

Under Section 51 of the MAL (AppendixD2) the Authority may, through consultation with the Financial Secretary, engage into a Memorandum of Understanding with Overseas Regulatory Authorities. The Financial Secretary shall be notified by the Authority of each MOU and the MOU is to be published post-haste into the Gazette. The Authority must act in accordance with the MAL.

#### **B. Procedures**

Where a request from an ORA is received by the Authority the following procedures shall apply:-

The supervisory or other division/department receiving the request, shall as a general practice within 24 hours of receiving a request forward a copy of the request along with a standard form to the Legal Division which addresses the following matters:-

- a) the name of the requesting authority;
- b) the nature of the information or other assistance requested such as the description of the facts underlying specific questions to be asked and sensitivity of the matter;
- c) whether the entity or person which is the subject of the request is regulated by the Authority and/or whether the information requested is likely to be found in the Cayman Islands.
- d) the information requested serves no other purpose than those directly related to fulfilling a supervisory and/or regulatory function of the Requesting Authority i.e. a valid purpose;
- e) the information requested serves the purpose of ensuring compliance with Laws and regulations related to the request or Requesting Authority; or
- f) the information requested shall not be used for any other purpose than those specified in the request or will not be disclosed without prior consent

Upon receipt of a request for assistance by the Legal Division it will first determine whether or not the requesting body falls within the definition of an ORA within the terms of Section 2 of the MAL. In deciding whether assistance should be granted, regard should be given to the matters set out in sub-section (2) and (3) of the Section 6 of the MAL.

In addition to the matters in section B above, the Legal Division will review all requests for assistance against the criteria set out in Section 50 (4) such as whether;

1. corresponding assistance would be given to the Authority in the recipient jurisdiction
2. the inquiries relate to a breach of a legal requirement which has a parallel or involves the assertion of a jurisdiction recognized in Cayman Islands.
3. it is in the public interest to give the assistance sought

and the conditions in Section 50 (8) of the MAL which require that;

1. the Authority be satisfied that the recipient authority is subject to adequate legal restriction on further disclosures
2. that an Undertaking be provided by the recipient authority to not disclose information without the prior consent of CIMA.
4. that CIMA is satisfied that the assistance requested is intended for the regulatory purposes of the recipient Authority
5. that CIMA is satisfied that information provided will not be used in criminal proceedings against the person providing the information other than for an offence of perjury

before advising on whether the assistance requested can be provided.

The Legal Division will make a record of the request, which will include a file number. All further correspondence relating to a particular request must include a reference to the internal file number for the purpose of keeping track of the requests and making input into the ORA log kept by the Legal Division.

The Legal Division shall as a general practice, within 24 hours of receiving a copy return to the supervisory division a memorandum indicating whether or not the request is in conformity with the requirements of the MAL and noting particularly whether any further undertakings required by Law or other additional information need to be provided by the requesting ORA.

The supervisory division on receiving a memorandum from the Legal Division shall as a general practice reply within 24 hours to the ORA with the information requested or where a further undertaking required by the MAL or additional information is necessary, require the ORA to provide the undertaking or additional information before any information is provided.

The supervisory division shall as a general practice within 24 hours of responding to a request forward a copy of its response to the Legal Division for the purpose of updating the ORA log with respect to each request.

Where the request involves onward disclosure to criminal authorities for the purpose of criminal investigations, the requirements of Section 50 (3) (c)(iii) have to be met.

Where it becomes necessary to share information provided with other local, regional, state, federal or international institution, the following requirements shall be met by CIMA where it is the “Requesting Authority”:

- a. notify the Requested Authority promptly
- b. obtain prior explicit consent for onward disclosure (where necessary)
- c. prior to passing on information ensure that the recipient agrees to maintain the confidential status of the information provided and has legal authority to do so
- d. use all reasonable legal means to protect the confidentiality of the information or to resist an enforceable demand where no consent for onward disclosure has been given

All responses (other than a holding response), shall be processed by the Legal Division. The Legal Division may however request another division to respond to a particular request or to carry out related tasks to satisfy a request as the circumstances may require. Copies of any information provided (or an inventory thereof), shall be retained by the Division in question.

Where the provision of assistance to an ORA requires the Authority to exercise its powers under Section 34 (9) to direct a person to provide specified information, produce specified documents or to give specified assistance the Legal Division must review and sign off on the direction issued by the Authority.

For the avoidance of doubt, where the request for assistance is made pursuant to an MOU, the Legal division shall assess and determine each request on a case-by-case basis and the procedures outlined above will also apply.

### **D1a - Extract: Monetary Authority Law, (2013 Revision)**

6. (1) The principal functions of the Authority are -

- (a) monetary functions, namely –
  - (i) to issue and redeem currency notes and coins; and
  - (ii) to manage the Currency Reserve, in accordance with this Law;
- (b) regulatory functions, namely –
  - (i) to regulate and supervise financial services business carried on in or from within the Islands in accordance with this Law and the regulatory laws;
  - (ii) to monitor compliance with the money laundering regulations; and
  - (iii) to perform any other regulatory or supervisory duties that may be imposed on the Authority by any other law;
- (c) co-operative functions, namely, to provide assistance to overseas regulatory authorities in accordance with this Law; and
- (d) advisory functions, namely, to advise the Government on the matters set out in paragraphs (a) to (c) and, in particular, with regard to –
  - (i) whether the regulatory functions and the co-operative functions are consistent with functions discharged by an overseas regulatory authority;
  - (ii) whether the regulatory laws are consistent with the laws and regulations of countries and territories outside the Islands; and
  - (iii) the recommendations of international organisations.

(2) In performing its functions and managing its affairs, the Authority shall - -

- (a) act in the best economic interests of the Islands;
- (b) promote and maintain a sound financial system in the Islands;
- (c) use its resources in the most efficient and economic way;
- (d) have regard to generally accepted principles of good corporate governance;
- (e) comply with this and any other law, including any regulations or directions made or given thereunder; and

- (f) have such ancillary powers as may be required to fulfil the functions set out in paragraphs (a) to (e).

(3) In performing its regulatory functions and its co-operative functions, the Authority shall, in addition to complying with the requirements of subsection (2) -

- (a) endeavour to promote and enhance market confidence, consumer protection and the reputation of the Islands as a financial centre;
- (b) endeavour to reduce the possibility of financial services business or relevant financial business being used for the purpose of money laundering or other crime;
- (c) recognise the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, from the point of view of 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;
- (d) recognise the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
- (e) recognise the desirability of facilitating innovation in financial services business; and
- (f) recognise the need for transparency and fairness on the part of the Authority.

(4) In exercising its co-operative functions, the Authority shall, in addition to complying with the requirements of subsection (2) -

- a) have regard to the matters mentioned in section 50(4); and
- b) comply with section 50(8).

**D1b - Extract: Monetary Authority Law, (2013 Revision)**

50. (1) Subject to subsections (2) and (3), a person who is a director, officer, employee, agent or adviser of the Authority and who discloses any information –

- (a) relating to the affairs of the Authority;
- (b) relating to any application made to the Authority or the Government under the regulatory laws;
- (c) relating to the affairs of a licensee;
- (d) relating to the affairs of a customer, member, client or policyholder of, or a company or mutual fund managed by, a licensee; or
- (e) shared by or with an overseas regulatory authority or any communication related thereto,

that he has acquired in the course of his duties or in the exercise of the Authority's functions under this or any other law, commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for one year, and on conviction on indictment to a fine of fifty thousand dollars and to imprisonment for three years.

(2) Subsection (1) shall not apply to a disclosure –

- (a) lawfully required or permitted by any court of competent jurisdiction within the Islands;
- (b) for the purpose of assisting the Authority to exercise any functions conferred on them by this Law, by any other law or by regulations made thereunder;
- (c) in respect of the affairs of a licensee or of a customer, member, client or policyholder of, or a company or mutual fund managed by, a licensee, with the authority of the licensee, customer, member, client, policyholder, company or mutual fund, as the case may be, which consent has been voluntarily given;
- (d) for the purpose of enabling or assisting the Governor to exercise any functions conferred on him under this Law or regulations made thereunder or in connection with the dealings between the Governor

and the Authority when the Authority exercises its functions under this or any other law;

- (e) if the information disclosed is or has been available to the public from any other source;
- (f) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of any licensee, or of any customer, member, client or policyholder of, or company or mutual fund managed by, a licensee to which the information relates to be ascertained;
- (g) lawfully made -
  - (i) to the Director of Public Prosecutions or a law enforcement agency in the Islands, with a view to the institution of, or for the purpose of, criminal proceedings;
  - (ii) to a person pursuant to the money laundering regulations; or
  - (iii) under subsection (3); or
- (h) for the purposes of any legal proceedings in connection with -
  - (i) the winding-up or dissolution of a licensee; or
  - (ii) the appointment or duties of a receiver of a licensee.

(3) Subject to subsection (8), where the Authority is satisfied that a request for assistance from an overseas regulatory authority should be granted, the Authority –

- (a) may disclose information necessary to enable the overseas regulatory authority to exercise regulatory functions, including the conduct of civil and administrative proceedings to enforce laws, regulations and rules administered by the overseas regulatory authority;
- (b) shall keep a record of all such requests and disclosures and an inventory of the information disclosed;
- (c) may, either at the time of request or at any time thereafter, consent to the use of the information for the purpose of -
  - (i) the conduct of civil and administrative enforcement proceedings;
  - (ii) assisting a self-regulatory organisation with surveillance or enforcement activities (insofar as the Authority is satisfied that

the organisation is involved in the supervision of conduct that is the subject of the request); or

(iii) assisting a criminal investigation or prosecution of any charge applicable to the contravention of the provision specified in the request, where such charge pertains to a contravention of the laws and regulations administered by the requesting authority; and

(d) may, in accordance with rules of court, apply to a Judge of the Grand Court in Chambers for an order to protect the interest of investors, depositors, policy holders or beneficiaries of trusts, including an order -

(i) to freeze relevant assets or accounts;

(ii) to suspend the issue, repurchase or redemption of units or shares of regulated funds; or

(iii) to authorize any other action in accordance with any request made to the Authority by the overseas regulatory authority pursuant to, and in accordance with, the terms of a memorandum of understanding entered into between the Authority and the overseas regulatory authority; and

(e) may permit the overseas regulatory authority to carry out, in relation to an entity in the Islands that is subject to its supervision or regulation, an on-site inspection or visit in a manner agreed in writing by the Authority and the overseas regulatory authority.

(3A) Upon application made to the Grand Court pursuant to subsection (3)(d), the Court shall make such orders as it considers appropriate in the circumstances.

(4) In deciding whether or not to assist an overseas regulatory authority (whether by use of the Authority's powers under subsection (3), section 34, section 35, or otherwise), the Authority shall take into account –

(a) whether corresponding assistance would be given in the relevant country or territory to the Authority;



- (b) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in the Islands or involve the assertion of a jurisdiction not recognised by the Islands; and
- (c) whether it is in the public interest to give the assistance sought.

(5) For the purposes of subsection (4)(a), the Authority may require an overseas regulatory authority which requests assistance to give a written undertaking, in such form as the Authority may require, to provide corresponding assistance to the Authority.

(6) Where an overseas regulatory authority fails to comply with a requirement of the Authority under subsection (5), the Authority may refuse to provide the assistance sought.

(7) The Authority may decline to exercise its power under subsection (3) unless the overseas regulatory authority undertakes to make such contribution towards the costs of the exercise as the Authority considers appropriate.

(8) The Authority shall not give to an overseas regulatory authority any assistance involving the disclosure or gathering of, or the giving of access to, information or documents unless –

- (a) the Authority has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures; or
- (b) the Authority has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Authority; and
- (c) the Authority is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil and administrative investigations or proceedings to enforce laws corresponding to the regulatory laws and administered by that authority; and
- (d) the Authority is satisfied that information provided following the exercise of its powers, will not be used in criminal proceedings against

the person providing the information, other than proceedings for an offence of perjury.

51. (1) The Authority may, in the exercise of its co-operative functions, after consultation with the Financial Secretary, enter into memoranda of understanding with overseas regulatory authorities for the purpose of assisting cross border supervision with such authorities or for such other regulatory or supervisory purposes as the Authority may deem fit.

(2) No memorandum of understanding may call for assistance beyond that which is provided for by this Law, or relieve the Authority of any of its functions or duties under this Law.

(3) The Authority shall notify the Financial Secretary of each memorandum of understanding entered into and promptly publish the memorandum of understanding in the Gazette.

### **D1c - Extract: Monetary Authority Law, (2013 Revision)**

34. (1) After private sector consultation and consultation with the Financial Secretary, 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;
- (b) issue or amend statements of guidance concerning the requirements of the money laundering regulations or the provisions of the regulatory laws; and
- (c) issue or amend rules or statements of principle or guidance to reduce the risk of financial services business being used for money laundering or other criminal purposes.

(2) *Repealed by Law 9 of 2010.*

(3) Rules or statements of principle or guidance issued under subsection (1) shall be consistent with this Law and the regulatory laws and with any regulations or directions made or given thereunder and shall state the provision of this Law, the regulatory Law, the regulations or the directions, as the case may be, to which they relate.

(4) The guidance notes referred to as “The Guidance Notes on the Prevention and Detection of Money Laundering in the Cayman Islands” issued on the 26th April, 2001, shall be deemed to have been issued under subsection (1).

(5) The Authority shall, without delay, publish in the Gazette notice of the issue or amendment of rules or statements of principle or guidance under subsection (1) and forward to the Financial Secretary copies of the rules or statements of principle or guidance as issued or amended.

(6) A breach of the rules or statements of principle or guidance issued under subsection (1) shall not constitute an offence, or of itself give rise to any right of action by persons affected, or affect the validity of any transaction.

(7) Rules made under subsection (1) may provide for the imposition by the Authority of penalties for breach of such rules, but -

- (a) no penalty shall exceed five thousand dollars; and
- (b) the rules shall establish the procedure and policy for imposing the penalty.

(8) The Authority may at all reasonable times, by notice in writing given -

- (a) to a person regulated under the regulatory laws;
- (b) to a connected person; or
- (c) to a person reasonably believed to have information relevant to an enquiry by the Authority,

require him -

- (i) to provide specified information or information of a specified description; or

- (ii) to produce specified documents or documents of a specified description,

as it may reasonably require in connection with the exercise by the Authority of its regulatory functions.

(9) Where, in accordance with section 50, the Authority is satisfied that assistance should be provided in response to a request by an overseas regulatory authority it may in writing direct -

- (a) a person regulated under the regulatory laws;
- (b) a connected person;
- (c) a person that is engaging in an activity that is subject to regulation under the regulatory laws; or
- (d) a person reasonably believed to have information relevant to enquiries to which the request relates,

within a stated time, to -

- (i) provide the Authority with specified information or information of a specified description with respect to any matter relevant to the inquiries to which the request relates;
- (ii) produce specified documents or documents of a specified description relevant to those inquiries; or
- (iii) give to the Authority such assistance in connection with those inquiries as the Authority may specify in writing.

(10) Where a person fails to comply with a requirement under subsection (8) or a direction given under subsection (9) within three days from the date of the requirement or direction or such longer period as the Authority may permit, the Authority may apply to the court for an order requiring the person to comply with the requirement or direction.

(11) Where, in connection with a requirement under subsection (8) or a direction given under subsection (9), the Authority considers it necessary to examine a person on oath, the Authority may apply to a court of summary jurisdiction to have that

person examined by the court and to have the results of that examination sent to the Authority.

(12) The court shall process an application under subsection (11) within seven days of its receipt and shall send the results of the examination to the Authority within fourteen days of the examination.

(13) Where documents are produced pursuant to subsection (8) or (9), the Authority may take copies of them or extracts from them.

(14) A person shall not be required under this section to disclose information or to produce a document which he would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in court proceedings except that an attorney-at-law may be required to provide the name and address of his client or principal.

(15) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.

(16)

(a) In this section –

“document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible and intelligible form.

(b) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -

(i) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;

(ii) by, or by a representative of, a person seeking legal advice from the adviser; or

(iii) by any person -

(A) in contemplation of, or in connection with, legal proceedings; and

(B) for the purpose of those proceedings.

- (c) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.
- (d) For the purposes of subsections (8) and (9), a person is connected with a person regulated under the regulatory laws (“A”) if he is or has at any relevant time been -
- (i) a member of A’s group;
  - (ii) a controller of A;
  - (iii) any other member of a partnership of which A is a member;
- or
- (iv) a member, officer, manager, employee or agent of A.

(17) A person who, without reasonable cause -

- (a) fails to comply with a requirement of the Authority under subsection (8) or a direction of the Authority under subsection (9);
- (b) with intent to avoid the provisions of subsection (8) or (9) destroys, mutilates, defaces, hides or removes a document; or
- (c) willfully obstructs an inquiry by the Authority, made in accordance with subsection (8) or (9),

commits an offence and is liable on summary conviction to a fine of ten thousand dollars and on conviction on indictment to a fine of one hundred thousand dollars, and if the offence of which he is convicted is continued after conviction he commits a further offence and is liable to a fine of ten thousand dollars for every day on which the offence is so continued.

(18)

- (a) Where an offence under this section, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body

corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

- (b) Where the affairs of a body corporate are managed by its members, paragraph (a) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(19) Where a person complies with a requirement under subsection (8), a direction under subsection (9) or an order under subsection (10), or gives evidence under subsection (11), such compliance shall not be treated as a breach of any restriction upon disclosure of information by or under any law and shall not give rise to any civil liability.

## **D2 - Memorandum of Understanding**

### **Criteria for entering into negotiation with a view to entering into a Memorandum of Understanding**

#### **1. Rationale for the establishment of criteria**

Whereas a Memorandum of Understanding (MOU) will increase the quality and timeliness of information on licensees' operations overseas, will reduce the cost of obtaining such information and will streamline the administrative processes in Cayman when requests are received, there is nevertheless a need to establish some objective criteria that an Overseas Regulatory Authority (ORA) must meet before the Authority would consider entering into an MOU with it.

The MOU itself will provide conditions to be met by each party to the Understanding.

#### **2. The Background**

An MOU between regulatory bodies facilitates cross-border co-operation on information exchange, timely access to information and the ability to verify information. All are critical to conduct effective supervision, as well as to engender the international cooperation necessary to enhance financial stability and fight financial fraud. As stated in the KPMG Review of Financial Regulation in the Caribbean Overseas Territories and Bermuda, at page 160; "It is common practice between regulatory authorities for the terms and conditions of information exchange and investigative assistance to be set out in a Memorandum of Understanding signed between the authorities which will be co-operating with each other. Memorandum of Understanding usually require requests for assistance to be framed in terms of the specific activities which are being investigated by the foreign jurisdiction...."

As stated by the Technical Committee of the International Organisation of Securities Commissions in the preamble to its Principles for Memoranda of Understanding: "MOUs are statements of intent which do not impose legally binding obligations on signatories. As such, they have no power to overcome domestic laws and regulations, nor do they affect other channels of co-operation, such as mutual assistance in criminal matters. The strength of MOUs, however, is that they facilitate the exchange of information by accommodating the differences between regulators and by responding to changing legal environments."

#### **3. Objective criteria to be taken into account**

- 3.1 Nature of the ORA in terms of powers, duties and functions and its reputation in the international financial regulation community, in particular the jurisdiction's membership of and adherence to



international standards of relevance. e.g. IOSCO, Basel, IAIS. Also, the impact upon the financial industry consequent upon entering into the MOU in that negative publicity may invalidate the benefits of co-operation.

- 3.2 Nature of the requesting authority's jurisdiction, including whether its legal system provides for similar legal protections to those existing in the Cayman Islands. In particular, whether confidentiality laws are similar to that of the Cayman Islands and whether or not it respects the Rule of Law. Whether domestic secrecy or blocking laws, regulations and policies exist relating to the collection and provisions of information to foreign authorities. Such matters should be provided for in the MOU itself. The KPMG review also advised that; "Memoranda of Understanding should only provide for the exchange of confidential information when the foreign regulatory authority has demonstrated that they will be able to safeguard the confidentiality of information provided by the OT regulator." (p.160)
- 3.3 The ORA's laws, regulations and policies on the use of information and due process and enforcement powers should be consistent with that of the Authority.
- 3.4 A commitment to reciprocity should be made in the MOU itself but in addition, the Authority should be reassured that reciprocal assistance would be given by the ORA. In short there must be a clear benefit to Cayman in all respects.
- 3.5 Frequency and nature of requests for assistance received from and served upon the ORA in question. Where there have been numerous requests for assistance in the past then the jurisdiction may be considered for entering into an MOU subject to the other criteria.
- 3.6 Nature and extent of existing relationship with the ORA and past history of co-operation. One or more of the regulatory divisions of the Authority may have had past or on-going dealings with the ORA in question, and this should provide useful information which will be utilised in making the decision as to whether or not a MOU should be entered into with the ORA.
- 3.7 Consideration should also be given to whether there is a mutual recognition of the equivalency of AML/CFT legislation between the two jurisdictions and if not, why not.

#### **4. Further considerations**

- 4.1 The criteria set out above will often form part of the conditions for the MOU and wherever possible should be provided for in the MOU itself.
- 4.2 The criteria set out in 2 above will be applied by the Authority when considering an ORA with a view to entering into an MOU with that ORA. Once it is concluded that the agreed criteria are satisfied, then

the Model MOU, as approved, will be used, subject to such necessary amendments as approved by the Cabinet in accordance with the Approval Process determined by the Cabinet.

## **5. Multilateral MOUs**

Multilateral MOUs are MOUs established by regulatory standard setters (eg. IOSCO or IAIS) or groups of regulators normally from different countries (although different regulators from the same countries can be parties to a multilateral MOU). In the context of an MMOU the signatories agree that they will be bound by the common standards and obligations covered by the MMOU. When considering whether to recommend that the Authority become a signatory to the MMOU many of the considerations referred to in paragraph 3 above are applicable (eg. reciprocity). In addition the Authority will need to take into account the criteria set out in 5.1 to 5.3 below.

- 5.1 The MMOU itself should contain appropriate grounds for denial of a request where a request from another signatory authority would require the Authority to act in a manner inconsistent with domestic laws or the public interest.
- 5.2 The benefits to be gained by the Authority and the jurisdiction should outweigh any negative costs involved in the Authority becoming a signatory to a MMOU.
  - 5.2.1 One of the benefits to consider would be whether entering into the MMOU would enhance the international reputation of the Authority and the Cayman Islands as a jurisdiction that adheres to appropriate international standards involving international cooperation.
  - 5.2.2 One of the costs to consider would be whether there would be an undue strain on the resources of the Authority in meeting the obligations under the MMOU.
- 5.3 The existing and/or potential signatories should be from jurisdictions that generally respect the rule of law and have broadly equivalent protections for the rights of persons likely to be impacted by the exchange of information under the MMOU.

## **D3a - Sample Format of a Memorandum of Understanding**

### **Memorandum of Understanding**

#### **BETWEEN THE**

Cayman Islands Monetary Authority (the “Authority”)

and the

[ ]

on the Exchange of Information  
for Co-operation and Consultation

[Place]

[Date]

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12. COSTS OF INVESTIGATION
13. TERMINATION OF MEMORANDUM OF UNDERSTANDING
14. EFFECTIVE DATE

**WHEREAS:**

- A.** The Cayman Islands Monetary Authority (hereinafter the “Authority”) and the \_\_\_\_\_ (hereinafter “ ”) and together hereinafter referred to as “the Authorities” recognise the need for mutual cooperation between the Authorities in the carrying out of their regulatory and supervisory functions under the relevant laws, regulations and rules in their respective countries.
- B.** The Authorities further acknowledge the importance of compliance with relevant international standards established by international standard setting bodies such as the Basel Committee on Banking Supervision, The International Association of Insurance Supervisors (IAIS), the International Organisation of Securities Commissions (IOSCO) and the Financial Action Task Force (FATF).
- C.** The arrangements outlined below are intended to enhance the existing working relationship between the Authorities.

## 1 DEFINITIONS

**“Requesting Authority”** means the Overseas Regulatory Authority, within the terms of s. 2 of the Monetary Authority Law (2013Revision), making a request under this Memorandum of Understanding.

**“Requested Authority”** means the Authority to whom a request is made pursuant to paragraph 6 of this Memorandum of Understanding;

**“Person”** means a natural person, body corporate, partnership, or unincorporated association, government or political subdivision, agency or instrumentality of a government;

**“Financial Institutions”** mean the institutions and persons regulated and supervised by either of the Authorities, and

**“Jurisdiction”** means the country, state or other territory, as the case may be, in which either of the Authorities has legal authority, power and/or jurisdiction by law.

**“Memorandum of Understanding”** means the arrangements for both mutual co-operation and exchange of information between regulatory bodies.

**“Registered Person”** means any person carrying on banking or other financial business activities requiring registration by either of the Authorities in order to carry out those functions, who may or may not be subject to individual registration but who is subject to the operative legislation within the jurisdiction.

## 2. INTENTION

2.1 This Memorandum of Understanding sets forth a statement of intent of the Authorities to establish a framework for mutual assistance and to facilitate the exchange of information between the Authorities to enforce or secure compliance with any laws, regulations or rules relating to the functions and duties of the Authorities in their respective jurisdictions.

2.2 The Authorities intend to provide one another with assistance under this Memorandum of Understanding to the full extent permitted by the laws, regulations and rules of their respective jurisdictions.

2.3 This Memorandum of Understanding will serve to promote the integrity, efficiency and financial soundness of financial institutions by improving the effective regulation, enhancing the supervision of cross-border transactions, and preventing fraudulent and other prohibited practices in [ ] and the Cayman Islands.

2.4 This Memorandum of Understanding does not create any binding legal obligations upon the Authorities.

2.5 The Authorities intend, where legal authorisation is lacking, to actively pursue all avenues towards obtaining, by law, all the necessary powers for the

effective achievement of the objectives of the Memorandum of Understanding, and to keep each other informed of developments in connection therewith.

- 2.6 The provisions of this Memorandum of Understanding do not lead to the right of any person, directly or indirectly, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Memorandum of Understanding
- 2.7 The Authorities will use reasonable effort to provide each other, as permitted by the laws of their respective jurisdictions, with any information that they discover which leads to a suspicion of a breach or anticipated breach of rules or laws in the jurisdictions of the Authorities.

### **3. SCOPE**

- 3.1 Through the machinery set up by this Memorandum of Understanding, the Authorities agree to promote mutual assistance and exchange of information to enable the Authorities to perform their respective duties and functions effectively according to the laws, regulations and rules of their respective jurisdictions.
- 3.2 In terms of this general theme, the scope of this Memorandum of Understanding includes the following:
- (a) Assisting in the discovery of and taking of action against unlawful activities and practices contrary to international standards subscribed to by the Authorities in relation to activities they regulate.
  - (b) Enforcement of the laws, regulations and rules relating to banking or other financial activities subject to regulation by the Authorities in their respective jurisdictions.
  - (c) Regulation and supervision of banks, financial institutions, collective investment schemes and clearing and settlement activities;
  - (d) Promoting and securing the fit and proper qualities of registered persons and the promotion of high standards of fair dealing and integrity of their conduct of business; and
  - (e) Assisting in the carrying out of responsibilities for the prevention of and enquiries relating to money laundering under the laws of their respective jurisdictions including the proper implementation of anti-money laundering procedures by financial institutions.
  - (f) Any matters agreed upon between the Authorities from time to time.

#### **4. UNDERTAKING OF INSPECTION VISITS**

- 4.1 The Requesting Authority may undertake or accompany inspection visits on Financial Institutions having business operations in or from the jurisdiction of the Requested Authority. Inspection visits will take place in accordance with the Requested jurisdiction.
- 4.2 All members of the inspection team will be required to give an undertaking of confidentiality prior to the commencement of any on-site inspection.
- 4.3 In the course of carrying out an inspection, an inspection team as referred to in 4.1 and 4.2 shall normally include a member of the Requested Authority's staff.

#### **5. REQUESTS FOR ASSISTANCE OR INFORMATION**

- 5.1 This Memorandum of Understanding does not affect the ability of the Authorities to obtain information from persons on a voluntary basis, provided that the existing Authorities observe procedures in the jurisdiction of each Authority for the obtaining of such information.
- 5.2 To facilitate communication and ensure continuity in the co-operation between the Authorities, each Authority designates the contact persons set forth in *Appendix D3b* hereto for communications under this Memorandum of Understanding.
- 5.3 A Requesting Authority will make requests for assistance in writing addressed to the contact officer of the Requested Authority.
- 5.4 The request will include -
- (a) A description of both the subject matter of the request and the purpose for which the Requesting Authority seeks the assistance or information;
  - (b) A description of the assistance, documents or information sought by the Requesting Authority;
  - (c) Any information in the possession of the Requesting Authority that might assist the Requested Authority in identifying the persons, bodies or entities believed by the Requesting Authority to possess the information sought, or the places where the Requested Authority may obtain such information;
  - (d) The legal provisions concerning the matter that is the subject matter of the request and the relevance of the requested information to the specified laws or regulatory requirements;
  - (e) Whether any other authorities, governmental or non-governmental, are co-operating with the Requesting Authority or seeking information from the confidential files of the Requesting Authority and to whom onward



disclosure of information is likely to be necessary; and the desired period of time for the reply; and

- (f) In urgent circumstances, the Requested Authority will accept a request for assistance and will expedite to the extent possible a reply thereto by summary procedures or by means of communication other than the exchange of letters. Such urgent communications must be confirmed in writing as prescribed above by the contact person set out in Appendix A within five business days.

## **6. EXECUTION OF REQUESTS**

6.1 Where the Requested Authority is satisfied in accordance with this Memorandum of Understanding and the laws governing the Requesting Authority that the assistance should be given, the Requested Authority will;

- (a) Provide information held in the files of the Requesting Authority;
- (b) Obtain information, including statements and testimony, and gather documents in accordance with the laws and procedures in the jurisdiction of the Requested Authority.

Notwithstanding any other provision of this Memorandum of Understanding any person providing information or documents as a result of a request made under this Memorandum of Understanding will be entitled to all applicable rights and privileges of the laws in the jurisdiction of the Requested Authority. Assertions regarding rights and privileges arising exclusively under the laws applicable in the jurisdiction of the Requesting Authority will be preserved for consideration by Courts in that jurisdiction.

6.2 Each request will be assessed on a case-by-case basis by the Requested Authority to determine whether information can be provided under the terms of this Memorandum of Understanding.

## **7. UNSOLICITED INFORMATION**

Where one Authority has information that will assist the other Authority in the performance of its regulatory functions, the former may provide such information, or arrange for such information to be provided spontaneously, to the extent permitted by the laws of its respective jurisdiction even though the other Authority has made no request. The terms and conditions of this Memorandum of Understanding will apply if the providing Authority specifies that it is passing the information under this Memorandum of Understanding.

## **8. PERMISSIBLE USES OF INFORMATION**

8.1 Any assistance or information provided under the terms of this Memorandum of Understanding shall be used by the recipient only for the purpose of

enabling the Requested Authority to exercise regulatory functions, including the conduct of civil or administrative investigations and proceedings to enforce the laws, regulations or rules of the Requested Authority as specified in the request.

- 8.2 The Requesting Authority may not use information furnished for any purpose other than that identified in terms of paragraph 5.4(a) without the consent of the Requested Authority.
- 8.3 If the Requesting Authority wants to use the information obtained for any purpose other than that stated in terms of paragraph 5.4(a) the Requesting Authority must notify the Requested Authority of its intention and provide the Requested Authority with an opportunity to consent to, or oppose such use.
- 8.4 Where the Requesting Authority believes that sharing confidential information with a third party is necessary, it must inform the Requested Authority of the third parties interest in this information and it must provide the Requested Authority with the opportunity to consent to, or oppose such use.
- 8.5 The Requesting Authority may consult with the Requested Authority concerning the reasons for the objection if the Requested Authority opposes such use.

## **9. CONFIDENTIALITY**

- 9.1 The Authorities will, to the full extent permitted by the laws, regulations and rules of their respective jurisdictions, keep confidential:-
- (a) Any request for assistance or information pursuant to this Memorandum of Understanding;
  - (b) Any information received or provided pursuant to this Memorandum of Understanding; and
  - (c) Any matter arising during the operation of this Memorandum of Understanding, including consultations and unsolicited assistance.
- 9.2 The Requesting Authority shall not disclose the assistance or information obtained pursuant to this Memorandum of Understanding to third parties without the prior consent of the Requested Authority.
- 9.3 Notwithstanding the provisions of paragraphs 9.1 and 9.2, the confidentiality provisions of this Memorandum of Understanding shall not prevent the Authorities from informing the law enforcement or regulatory bodies in its jurisdiction of the request or from passing information received pursuant to a request provided that:

- (a) Such agencies or bodies have responsibility for prosecuting, regulating or enforcing rules or laws falling within the scope of this Memorandum of Understanding; or
- (b) The purpose of passing on such information to such an agency or body falls within the scope of this Memorandum of Understanding; and
- (c) An undertaking has been obtained from the recipient by the Requested Authority that it will maintain the confidentiality of the information.

9.4 The Authorities confidential treatment of assistance and information will continue when either Authority gives notice of its intent to cease co-operation under this Memorandum of Understanding. The Authorities understand that the laws, regulations and rules of their respective jurisdictions place limitations on use and disclosure of non-public information obtained pursuant to this Memorandum of Understanding.

## **10. RIGHTS OF REQUESTED AUTHORITY**

10.1 The Requested Authority may deny requests for assistance under the Memorandum of Understanding -

- (a) Where the request would require the Requested Authority to act in a way that would violate the laws of the jurisdiction of the Requested Authority;
- (b) Where the request is not in accordance with the provisions of this Memorandum of Understanding;
- (c) Where corresponding assistance would not be given in the country of or territory of the Requesting Authority;
- (d) Where the request involves a breach of law or other requirement which has no close parallel in the country or territory of the Requested Authority or involve the assertion of a jurisdiction not recognised in the country or territory of the Requested Authority; or
- (e) On the grounds of public interest.

10.2 Where the Requested Authority denies a request for assistance, or where assistance is not available under the law of the jurisdiction of the Requested Authority, the Requested Authority will provide the reasons why it is not granting the assistance. The Authorities will then consult pursuant to Clause 11.

10.3 The Authorities recognise that they intend nothing in the Memorandum of Understanding to either limit or enhance the powers of the Authorities under the laws of their respective jurisdictions to investigate or gather information or to take measures otherwise than as provided in the Memorandum of

Understanding to obtain information, whether or not concerning a request under the Memorandum of Understanding.

## **11. CONSULTATION**

11.1 The Authorities will consult with each other to improve the operation of the Memorandum of Understanding and resolving any matters that may arise including but not limited to -

- (a) Matters of mutual interest to enhance co-operation and to protect investors by ensuring the stability, efficiency, and integrity of the financial services industry in their respective jurisdictions,
- (b) The co-ordination of the supervision of financial institutions; and
- (c) The administration of the laws, regulations and rules of their respective jurisdictions.

The purpose of such consultations is to assist in the development of mutually agreeable approaches for strengthening the financial services industries of their respective jurisdictions whilst avoiding, whenever possible, conflicts that may arise from the application of differing regulatory practices.

11.2 The Authorities will consider the need for additional measures for the exchange of investigation, enforcement, supervisory and surveillance information in the administration and enforcement of the laws, regulations and rules concerning financial institutions in their respective jurisdictions, on an ongoing basis. To this end, the Authorities will inform one another of the adoption of domestic measures that may affect their respective authority to provide assistance under this Memorandum of Understanding.

11.3 The Authorities may take practical measures as may be necessary to facilitate the implementation of the Memorandum of Understanding. As such, the Authorities may amend, relax or waive any of the terms of the Memorandum of Understanding.

## **12. COSTS OF INVESTIGATION**

If it appears that the Requested Authority will incur substantial costs in responding to a request for assistance under this Memorandum of Understanding, the Requested Authority may, as a condition to executing the requests, require the Requesting Authority to contribute to its cost in an amount agreed upon by the Authorities.

## **13. TERMINATION OF THE MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding will continue in effect until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate the Memorandum of Understanding. If either Authority gives such notice, this Memorandum of Understanding will continue to have effect with respect to all requests for assistance that the Authorities made before the effective date of notification until the Requesting Authority terminates the matter for which it requested assistance.

**14. EFFECTIVE DATE**

This Memorandum of Understanding will be effective from the date of its signing by the Authorities.

SIGNED at this day of 20XX

***FOR AND ON BEHALF OF  
THE CAYMAN ISLANDS MONETARY AUTHORITY***

.....

***FOR [ ]***

.....

## D3b - Designated Contact Officers

### DESIGNATED CONTACT OFFICERS

#### **The Cayman islands Monetary Authority**

P O Box [ ]

[ ]

[ ]

[ ]

[ ]

[ ]

For all supervision purposes:

Managing Director

Tel

Fax

E-mail:

For all enforcement activities:

Mr

Tel:

Fax:

[ ] Authority

[ ]

[ ]

[ ]

[ ]

Name

Tel:

Fax:

Email:

# **THE SUPERVISORY APPROACH - LICENSING PROCESS**

## **E1 – Procedures for Dealing with Licensing & Supervisory Matters**

### **1. Introduction**

As a result of operational independence of the Cayman Islands Monetary Authority (“CIMA”) decision-making is vested in the Board of Directors of the CIMA.

Government sets licensing fees and CIMA is the conduit through which licensing fees are collected and paid to Government.

### **2. Responsibilities**

CIMA has two committees mandated to handle licensing and supervisory functions. An Executive Committee of the Board (“Executive Committee”), comprised of locally based directors and a Management Committee (“MC”) comprised of select members of CIMA’s senior management.

#### **Executive Committee**

With the exception of any matters on which the MLRO is obliged to report pursuant to the Money Laundering Regulations, the Executive Committee has responsibility for **all** enforcement decisions, and new licence applications under the Securities Investment Business Law (2015Revision), where that institutions does not already hold a licence from the Authority.

#### **Management Committee**

The MC has responsibility for licensing and supervisory matters as detailed in Appendix E2.

Licensing is the primary function of the MC. In addition the MC is responsible for consideration and initiation of enforcement actions, and any other matters that the Board may decide to delegate to it from time to time.

The MC may review a paper and decide that the scope of the matter is beyond the authority of the MC, and/or it may also prefer to seek the advice of the Executive Committee on specific matters. In such instances the paper is submitted onwards to the Executive Committee, together with all relevant information, including the MC’s recommendations.

### **3. Composition & Quorum**

#### **Executive Committee of the Board**

The Executive Committee is comprised of six locally based CIMA directors, including the Chairman and Deputy Chairman of the Board of Directors. A quorum of three local directors is required in order for a meeting to be properly constituted. A decision is made by majority vote of those present.

#### **Management Committee**

In pursuit of its functions, the Board may delegate to a sub-committee or the Management Committee (MC) such licensing, supervisory and other powers and duties that the Board sees fit. A decision of the MC shall be deemed to be a decision of the Board, as the powers of the amended Law are vested with the Board.

The MC is comprised of the Managing Director as Chairperson, the Deputy Managing Director, the Legal Counsel and the Heads of the supervisory divisions or such person as may be designated by the Head to act in his or her absence. There are currently four regulatory Heads on the MC, representing the Insurance Supervision Division, Banking Supervision Division, Fiduciary Services Supervision Division, and the Investments and Securities Supervision Division. In addition, the Managing Director may, with the approval of the Board, designate such other senior officer of the Authority to sit on the Management Committee. A quorum of at least two of the Heads of the supervisory divisions must be present in addition to the Chairperson in order for a meeting to be properly constituted. The Chairperson's alternate may be any one of the Deputy Managing Director, the General Counsel, or the Head of a regulatory division not already included in the quorum, or in their absence, such other member of the MC as designated by the Managing Director. A decision is made by majority vote of those present.

#### **4. Conduct and Conflicts of Interest**

##### **Executive Committee of the Board**

Members of the Board are required to adhere to a strict Code of Conduct, Conflicts of Interest Code, and to the provisions of the Monetary Authority Law and to declare any conflicts of interest, including making an annual declaration of any conflicts of interest. (Appendices C2 and C3)

##### **Management Committee**

Members of the MC are required to adhere to a strict Code of Conduct and are required to declare any conflicts of interest. (Appendix C4).

#### **5. Meetings**

##### **Executive Committee of the Board**

The Executive Committee meets on Tuesday mornings as and when necessary, and all papers, including key background documents and file folders, must be submitted to the Executive Assistant to the Managing Director by 4:00pm on the preceding Tuesday for inclusion on the Agenda. In exceptional circumstances, papers received later than the preceding Tuesday may be brought before the Executive Committee for consideration, but the Chairperson must approve inclusion of a late paper. At each Executive Committee meeting, minutes are recorded, confirmed and retained.

The agenda and the supporting materials must be circulated to the local directors present in the Island no later than the preceding Friday. The agenda and supporting papers must be circulated by secured email to the foreign directors. Minutes of the



meetings must be circulated to all directors by email within 3 working days of the meeting.

### **Management Committee**

The MC meets weekly on a Tuesday morning, and all papers, including key background documents and file folders must be submitted to the Executive Assistant to the Managing Director by 4:00pm on the preceding Wednesday for inclusion on the agenda. In exceptional circumstances, papers received later than the preceding Wednesday may be brought before the MC for consideration, but the Chairperson must approve inclusion of a late paper. At each MC meeting, minutes are recorded, confirmed and retained by the Executive Assistant to the Managing Director.

## **6. Preparation of Papers for Approval**

### **Management Committee**

All papers (see samples Appendix C5 & C6) must be approved by the relevant Head of Division or in his/her absence the Deputy Head before submission to the MC for pre-approval/approval as appropriate. All papers must initially be emailed to the Executive Assistant to the Managing Director who will insert reference number details. The Executive Assistant to the Managing Director posts referenced papers electronically to the 'MO Submissions' folder on the internal computer network, in order that members of the MC may consider the paper in advance of the weekly meeting. At the time of posting the paper electronically, the file containing all pertinent information about the licensee with a signed copy of the submission must be forwarded to the Executive Assistant to the Managing Director, in order that all documentation may be available during the MC meeting as may be required.

### **Executive Committee of the Board**

Prior to a paper going forward to the Executive Committee it is subject to the procedure outlined above for MC pre-approval. The paper must be prepared in the format as outlined in Appendix C6. Once the MC approves a paper for onward submission to the Board the relevant Head informs his/her division and 9 copies (1 copy must be signed and retained by the Executive Secretary for his/her files) of the paper (on green copy paper) together with all pertinent files and documentation, are delivered to the Executive Secretary to the Board for addition to the Executive Committee's weekly agenda.

### **Cabinet**

Some functions of the CIMA remain the responsibility of Cabinet e.g. the issue of directives or regulations under the MAL. Prior to a paper going forward to Cabinet, it will have gone through the procedures outlined above for MC pre-approval and Executive Committee approval. Once approved by the Executive Committee the Executive Secretary forwards the paper to Cabinet through the Financial Secretary for consideration.

## **7. Records & Extracts**

A log of every paper received for consideration by the MC or the Executive Committee is retained in the Managing Director's office. Each paper is recorded and allocated a meeting number and an item number. Extracts (see sample Appendices C7a & C7b) is produced on yellow copy paper for all licensing/supervisory decisions taken by the MC or the Executive Committee. A copy of each extract is forwarded to the Head of division from which the paper emanated. A master file containing all extracts is held in the Managing Director's office.

## 8. Licence Issuance, Communication & Gazetting

If the MC or Executive Committee approves a paper, CIMA takes the appropriate action and communicates the decision to the relevant parties in a timely manner. Once the extract of a decision taken by the MC or Executive Committee has been completed/issued, the Executive Secretary to the Board acts in accordance with the decision. The MD is empowered to issue all licenses approved by the MC and the Executive Committee. If a licence is to be issued, the Head of the relevant regulatory division arranges for the licence to be prepared and submitted to the Managing Director's office for signature. Once licences or other associated paperwork are signed, they are returned to the Executive Secretary, in order that the necessary documentation may be despatched to the applicant and copied to the division.

The Head of the Investment & Securities Division is empowered to sign certificates for all registered funds approved by the Division.

Each division must ensure that those matters, which require gazetting or publication on CIMA's website, are forwarded to the Executive Secretary for publication in a timely manner.

## 9. Reporting

The Managing Director provides quarterly reports to the Financial Secretary covering the following areas.

- Board Meetings convened
- General Policy Issues
- Overview of the Regulatory Divisions, detailing any trends and initiatives happening in the domestics and international markets
- International Initiatives
- Summary of Number of Licences (using comparatives)
- Comparison of Budgeted Revenue and Actual Revenue collected to date

## E2 - Time Lines

<b>BANKING SUPERVISION TIMELINES</b>		
<b>Type of Approval</b>	<b>Responsibility</b>	<b>Time Frame</b>
Director/Senior Officer Approval	Division	3 weeks
New Licence Applications (Category "A" Licensees)	MC	5 weeks
New Licence Applications (Category "B" Licensees)	MC	4 weeks

Amendments to ownership structure ( no change in beneficial ownership)	Division	3 weeks
Approval for change in ultimate beneficial ownership (controlling interest)	MC	4 weeks
Approval for Issue, Transfer, Disposal of shares- (no change in control)	Division	1 week
Approval for Surrender of Licence	MC	4 weeks
Approval for Change of Name	Division	2 weeks
Approval for change of financial year end	Division	1 week
Approval to open a subsidiary, branch, agency or representative office ( for licensed activities only)	MC	4 weeks
Approval of Change of Auditors (Banks & Trust Law)	Division	1 week
Extension of Filing of Regulatory Reports (eg BS Form, Financial Statements)	Division	1 week
Amendments to the Business Plan	Division	1 week
Approval for use of the word "Bank" and its derivatives	MC	2 weeks
Approval for Change of Principal Office &/or Authorised Agent (Banks & Trust Law)	Division	1 week
Make Regulations (S.23)	Cabinet	

<b>FIDUCIARY SERVICES TIMELINES</b>		
<b>Type of Approval</b>	<b>Responsibility</b>	<b>Time Frame</b>
Director/Senior Officer Approval	Division	3 weeks
New Licence Application - Unrestricted Trust	MC	5 Weeks
New Licence Application - Company Management Licence	MC	4 Weeks
New Licence Application – Corporate Licence	MC	4 weeks
New Licence Application - Restricted Trust Licence	MC	4 Weeks
New Licence Application - Nominee Licence	MC	4 Weeks
Amendments to ownership structure ( no change in beneficial ownership)	Division	3 weeks
Approval for change in ultimate beneficial ownership (controlling interest)	MC	4 weeks
Approval for Issue, Transfer, Disposal of shares- (no change in control)	Division	1 week
Approval for Surrender of Licence	MC	4 Weeks
Approval for Change of Name	Division	2 Weeks
Approval for change of financial year end	Division	1 Week
Approval of Change of Auditors (Companies Management Law)	Division	1 week
Extension of Filing of Regulatory Reports ( eg Biannual Form, Financial Statements)	Division	1 week
Approval of "authorised insurer" (Companies Management Law)	Division	1 week
Approval of "authorised/recognised custodian"	Division	4 weeks
Amendments to the Business Plan	Division	1 week
Approval for use of word "Trust"	MC	2 weeks
Approval for Change of Principal Office & Authorised Agent (Banks & Trust Law)	Division	1 week
Make Regulations (S.23)	Cabinet	

<b>INSURANCE SUPERVISION TIMELINES</b>		
<b>Type of Approval</b>	<b>Responsibility</b>	<b>Time Frame</b>
Director/Senior Officer Approval	Division	3 weeks
New Licence Application - Class A	MC	5 weeks
New Licence Application - Insurance Manager	MC	5 weeks
New Licence Application - Agent	MC	4 weeks
New Licence Application - Broker	MC	4 weeks
New Licence Application - Class 'B'	MC	4 weeks
Approval for Issue, Transfer, Disposal of shares	Division	1 week
Amendments to ownership structure (no change in beneficial ownership)	Division	3 weeks
Approval for change in ultimate beneficial ownership (controlling interest)	MC	4 weeks
Approval for Cancellation of Licence	MC	4 weeks
Extension of Filing of Regulatory Reports ( eg Financial Statements)	Division	1 week
Approval for Change of Name	Division	2 weeks
Approval for change of financial year end	Division	1 week
Approval to open a subsidiary, branch, agency or representative office (for licensed activities only) – Class A	MC	4 weeks
Approval of Change of Auditors (Insurance Law)	Division	1 week
Approval for use of word Insurance	MC	2 weeks
Amendments to the Business Plan	Division	1 week
Make Regulations (S.23)	Cabinet	

<b>INVESTMENT AND SECURITIES DIVISION TIMELINES</b>		
<b>Type of Approval</b>	<b>Responsibility</b>	<b>Timeframe</b>
New Application – Securities Investment Business Licence (Note 1)	MC	5 weeks
New Application – Japanese Regs	MC	5 weeks
Excluded Person Declaration – Securities Investment Business law	Division	1 week
Director/Senior Officer Approval (MFA & Sec. 5 Funds)	Division	3 weeks
New Mutual Fund Administrators Licence Application	MC	5 weeks
New Mutual Fund Registration (Sec. 4(3) & 4(1)(b))	Division	3-5 days
New Mutual Fund Licence Application (Sec. 5)	MC	4 weeks
New Restricted Mutual Fund Administrators Licence	MC	4 weeks
Approval for change in ultimate beneficial ownership (controlling interest)	MC	4 weeks
Issue, transfer, disposal, dealing in shares (MFA & Sec. 5 Funds) including approval of new shareholders (no change in control)	Division	1 week
Approval for Revocation of MFA Licence on voluntary surrender by licensee (MFL 30 (12))	MC	4 weeks
Cancellation/Deregistration of Mutual Fund (Sec. 4(3), 4(1)(b) & 5)	Division	1 week
Extension to Filing of Regulatory Reports (RF-1, Financials)	Division	1 week

Approval for Change of Name - Fund	Division	1 week
Issuance of new certificate for Change of Name - MFA	Division	2 weeks
Amendments to the Business Plan	Division	1 week
Make Regulations (s.23)	Cabinet	

Note 1: The Board has delegated to the Management Committee (MC) the licensing of an institution under the Securities Investment Business Law where that institution already holds a licence from the Authority.

## **E3 – Regulatory Policy - Assessing Fitness and Propriety**

November 2007

### **1. Statement of Objectives**

To set out the procedure followed by the Authority to assess the fitness and propriety of persons who have applied to act for or are existing directors, operators, senior officers, general partners, promoters, insurance managers or shareholders of licensed entities (“directors and senior officers”).

### **2. Introduction**

- 2.1. The regulatory laws list the following criteria for assessing the fitness and propriety of persons:
  - a) Honesty, integrity and reputation;
  - b) Competence and capability; and
  - c) Financial soundness.
- 2.2. The primary objective in assessing the fitness and propriety of directors or senior officers is to protect the depositors, investors, policyholders, creditors or public against future conduct by that person which may harm them.
- 2.3. The Authority has issued a Regulatory Policy on Fitness and Propriety (“RPy- Fitness and Propriety”), which sets and describes the criteria the Authority will apply to determine whether persons are fit and proper to act as directors and senior officers and should be read in conjunction with this procedure.
- 2.4. The fit and proper assessment of a person is both an initial test undertaken during consideration of an application for licensing and a continuing test in relation to the conduct of the business and its relationship with the Authority.

### **3. Assessment of Persons upon Application**

#### **3.1. Documentation To Be Collected**

According to the applicable legislation, the licence application forms and the Authority’s Regulatory Policy on Licensing applicants should provide the following:

- 3.1.1. A completed current version of the personal questionnaire (“PQ”) issued by the Authority;
- 3.1.2. Not less than three references acceptable to the Authority, including at least two character references for the applicant, and one reference verifying the good financial standing of the applicant, all being dated within six months of submission to the Authority. The financial reference letter must be from a financial institution; and in addition,

- a) should state whether the account has been satisfactorily maintained;
- b) should state the period of the relationship which should be a minimum of two years; and
- c) should be signed and on a company letterhead.

The character reference letters must:

- d) not be written by any person with a familial relationship to the applicant;
  - e) state the period for which the person writing the reference has known the applicant which should be a minimum of three years
  - f) state the nature of the relationship;
  - g) be written by a person who is independent, without a vested interest in the acceptability of the reference. For example, letters from employees of the applicant who work under their influence are not acceptable.
  - h) be signed and indicate a contact name and address; and
  - i) should address the applicant's honesty, integrity and reputation as well as their competence and capability in fulfilling their proposed role.;
- 3.1.3. A police or other certificate satisfactory to the Authority, such as an affidavit, that the applicant has not been convicted of a serious crime or any offence involving dishonesty; and
- 3.1.4. Evidence acceptable to the Authority of the applicant's professional knowledge, and experience in the particular business he is seeking to act in.
- 3.1.5. The above documentation is required for all licensees, except administered or registered mutual funds under the Mutual Funds Law.

## 3.2. Risk Assessment

- 3.2.1. Upon the receipt of documentation, the respective supervisory division will review for completeness and compile the following information for submission to the Compliance Division:
- a) Name of the applicant and the name of the institution in connection with which the approval is being sought;
  - b) A risk assessment to make a distinction between low, medium and high-risk applications (section 3.2.2 below);
  - c) Where a high-risk profile has been determined, a selection of additional verification steps to be performed.; and
  - d) Any other special instructions.
- 3.2.2. In conducting a risk assessment, the Supervisory Division will assign a risk assessment of low, medium or high based on the extent of the

following factors and the weight the Supervisory Division puts to those factors:

- a) Answers in the standard form Personal Questionnaire (which appears as Appendix E3), and in particular (but not limited to) questions #13 through #24;
- b) The proposed role of the applicant, for example, as directors have greater fiduciary duties than shareholders, all things being equal directors may be a higher risk;
- c) The type of licence being sought, for example, restricted licences are lower risk than unrestricted; Class A banks are higher risk than Class B banks;
- d) Complexity of business of the proposed licensee, for example variable life insurance is of higher risk than property insurance;
- e) Risk exposure of the proposed licensee, for example, liabilities or coverage of a related party is a lower risk than that of third parties;
- f) Organization structure of the proposed licensee, for example, bank branches are considered less of a risk than subsidiaries, due to the legal structure;
- g) The experience and qualifications of the applicant, for example, those with greater experience (and in particular, experience on other Cayman Islands licensees) and those possessing a relevant qualification would be considered to be less of a risk;
- h) Previous compliance history of the applicant;
- i) The jurisdiction where the applicant operates or resides, for example, those not on the list of countries in Schedule 3 to the Money Laundering Regulations, (2015Revision) may be considered a higher risk than Schedule 3 countries;
- j) An assessment of the quality of the financial and character reference letters;
- k) Any information identified while performing the procedures for assessing the fitness and propriety of applicants; and
- l) Any other factor the Supervisory Division deems relevant in determining the fitness and propriety of an applicant.

### 3.3. Assessment Procedures -Compliance Division

3.3.1. The following procedures are performed on all requests received by the Compliance Division:

- a) The Personal Questionnaire (PQ) is thoroughly reviewed, ensuring that all questions have been properly answered and that the PQ is dated within 6 months of the application;
- b) The three references are reviewed to ensure they meet the requirements set out in 3.1.2 above;
- c) References are verified by calling the reference writers, who are asked to validate the information that was set out in the reference.



- d) The affidavit or police clearance is reviewed to ensure it meets the following standards:
  - Dated within six months of the application;
  - If it is a police clearance certificate, it is stamped and signed.
  - If it is an affidavit, it is:
    - i. Signed by the Applicant;
    - ii. Signed by a notary, affixed with the seal as required in that jurisdiction;
- e) Information on the three references is compared to the PQ for internal consistency, including:
  - Checking the names and addresses on the references to PQ: Q2 and Q4; and,
  - Comparing information on employment on the references to PQ: Q9.
- f) A search for the applicant's names is conducted on the Authority's internal databases.

3.3.2. In addition to the procedures set out in Section 3.3.1 above, the following procedures are performed on all medium risk requests received by the Compliance Division:

- a) A search on the World-Check database is conducted. World-check is a database that tracks potential high-risk financial customers, including money launderers, terrorists and political figures, among numerous other high-risk categories.
- b) A search of Regulatory DataCorp's Global Regulatory Information Database ("GRID"), which is a collection of in-depth, current, risk-relevant data. The database contains approximately 1.5 million individual and business names drawn from over 22,000 international and US public record sources including government lists, media and regulatory actions.
- c) A search of publicly available search engine websites be made for the following:
  - The applicant's name;
  - Entities listed in PQ: Q10 of which the applicant is a director;
  - The licensee; and,
  - The licensee's ultimate shareholder.

3.3.3. In addition to the procedures set out in sections 3.3.1 and 3.3.2 above, the Supervisory Division can, in cases where applications have been assessed as high-risk, seek up additional verification steps to be performed on the applicant. The additional verification work that can be performed includes the following:

- Verification of the criminal history;
- Verification of employment history;
- Verification of professional qualifications;

- Verification of civil history;
- Verification of education;
- Verification of evidence of identity.

3.3.4. The length of time for which an application can be processed will depend on the risk assessment and thus the amount of work that is necessary to complete the assessment.

#### 3.4. Assessment of Previously approved persons

3.4.1. In cases where the applicant is an existing director or senior officer of a licensee, and due diligence has already been performed on this person, it may be appropriate to substantially reduce the amount of due diligence work to be performed on future applications.

3.4.2. Upon a future application for approval, the Authority would require, where the information is not already on file and dated within twelve months of the application, the following from the applicant:

- a) A questionnaire approved by the Authority and completed by the applicant; and,
- b) A police or other certificate satisfactory to the Authority that the applicant has not been convicted of a serious crime or any offence involving dishonesty.

3.4.3. In some circumstances, the Supervisory Division would assign an assessment of low risk for an Applicant who is an existing director or senior officer. If this is the assessment, no further documentation is likely to be required. The Authority's due diligence procedures would comprise of reviewing the documents to identify any discrepancies or changes since the previous documentation was received.

3.4.4. If the Supervisory Division determines that the applicant should be assessed as medium risk or high risk, the documentation listed in 3.1 should be collected, and the due diligence steps for new applications as identified under Section 3.3 should be employed.

#### 3.5. Reporting and Decision Making

3.5.1. Upon completion of the applicable due diligence procedures, a Due Diligence Summary Report will be completed by the Compliance Division and submitted to the Head or Deputy Head of the Supervisory Division that submitted the application to Compliance Division.

3.5.2. The Due Diligence Summary Report documents the results of the above procedures, providing details of the work that was performed and what discrepancies, if any, were identified. It will also identify whether any documentation is still outstanding and provide a summary of the discrepancies and a conclusion as to suitability.

- 3.5.3. In an effort to minimise the delay in responding to Supervisory Divisions, the Due Diligence Summary Report will be submitted when there have been three (3) failed attempts to verify the references. This will be noted as a discrepancy on the Due Diligence Summary Report and the Supervisory Division will need to assess whether further follow up is required.
- 3.5.4. While the information provided in the Due Diligence Summary Report will be pertinent in assessing whether persons are fit and proper to act as directors, managers and officers of licensed entities, the ultimate responsibility for making this decision vests with the Supervisory Division.

### 3.6. Document Retention and Centralisation

- 3.6.1. There is a central database containing details of the persons who have been assessed by the Compliance Division according to this Procedure.
- 3.6.2. Information is stored electronically, for each person previously subject to the due diligence process, and the Authority will possess the following:
  - a) A copy of the documentation received from the applicant;
  - b) A copy of the completed Due Diligence Request Form; and,
  - c) A copy of the Due Diligence Summary Report.
- 3.6.3. In addition, the evidence collected to support the conclusions in the Due Diligence Summary Report, along with the required documents provided with the application, will be retained centrally with the Compliance Division.

## 4. Assessment of Existing Persons in the absence of a new application

### 4.1. Basis for Enquiries

- 4.1.1. At the end of the PQ, the Applicant certifies that the information in the PQ is complete and correct and that s/he undertakes that, as long as he continue to be a director or senior manager, s/he will notify the Authority of any material changes affecting the completeness of the answers to questions 11 – 25 of the PQ within a period of 21 days.
- 4.1.2. As a result, as standard practice the Authority does not make inquiries into whether a person acting as a director or senior officer remains fit and proper.
- 4.1.3. However, there will be circumstances that may prompt the Authority to make further enquiries of a person acting as a director or senior officer,

with a view to assessing whether that person continues to be fit and proper.

- 4.1.4. Broadly speaking, there are two primary circumstances that would warrant further enquiries by the Authority into a person's fitness and propriety:
- a) The direction and management of a licensee's business has not been conducted in a fit and proper manner;
  - b) The Authority is made aware that a director or senior officer has been subject to or has been involved in any of the matters listed under the RPy-Fitness and Propriety.

## 4.2. Concerns surrounding a Licensee

- 4.2.1. The Authority may be prompted to make further enquiries into the actions or lack of action when the direction and management of a licensee's business has not been conducted in a fit and proper manner.
- 4.2.2. The primary responsibility for ensuring compliance with a licensee's regulatory obligations rests with the licensee itself. Normally therefore, the Authority's main focus, in considering whether action is appropriate, will be on the licensee rather than on its directors or management.
- 4.2.3. In some cases, however, it will not be appropriate to hold a licensee responsible for the actions of its directors and management. For example, where management may have acted in a manner detrimental to the interests of a licensee's depositors, investors, policyholders, or creditors and where the licensee can demonstrate it took all reasonable steps to prevent the breach.
- 4.2.4. Alternatively, in other cases, it may be appropriate for the Authority to investigate the actions of both the licensee and the directors or management. For example, where the licensee has breached the rule requiring it to take reasonable care to establish and maintain such systems and controls as are appropriate to its business and the directors or management have taken advantage of those deficiencies to front run or misappropriate assets.
- 4.2.5. In such circumstances as described above, the Authority will utilise one of two approaches, or a combination thereof, to assess the fitness and propriety of directors and senior officers:
- a) A person, either upon its own initiative or upon the request of the Authority, reports on the fitness and propriety of the directors and senior officers, for example upon appointment of a controller, liquidator advisor or other expert to inter alia investigate the affairs of the licensee; or,

- b) The Authority, using its regulatory powers to obtain and perform analysis of information, investigates the actions (or lack of action) of directors or senior officers.

4.2.6. The extent to which the Authority will utilise either of the approaches will be dependent upon a number of factors, including, but not limited to, the source of the information, access to the documents, the basis for any conclusions reached and its credibility.

#### 4.3. Concerns arising from other sources

4.3.1. The Authority may become aware of certain information, originating outside of the supervision of the licensee, which may give rise to concerns of the fitness and propriety of a director or senior officer to continue to perform his or her functions. Examples of such information include those circumstances identified in the RPy-Fitness and Propriety.

4.3.2. The extent to which the Authority will rely upon the information is dependent upon a number of factors, including, but not limited to, the source of the information, the authority that it carries, whether it is independent, the basis for any conclusions reached and its credibility. It may also be important to corroborate the information obtained with other independent and/or reliable sources, particularly where the information is not from an authoritative source.

4.3.3. To assist the Authority to perform its own enquiries and analysis of the information, it is imperative that the Authority collect all information on the subject and where possible, obtain original or certified copies of the documents, court orders or reports that are most authoritative, independent or fact-based. It is also important to ensure the document is final.

#### 4.4. Factors to be taken into Account

4.4.1. The Authority will take action against a person acting as a director or senior officer of a licensee if it considers that the person is no longer a fit and proper person to perform his respective function. The following paragraphs set out the factors, in this context, the Authority will take into account in considering whether or not a person is a fit and proper person to hold his respective function.

4.4.2. In assessing whether it is appropriate to take action against a director or senior officer, the Authority may consider the following, amongst other factors:

- a) Whether action against the licensee rather than the person would be a more appropriate regulatory response; and,
- b) Whether action would be a proportionate response to the nature and seriousness of the breach of that person.

- 4.4.3. In addition, the Authority may have regard to the following (which is not exhaustive):
- a) The seriousness of the misconduct in question, of which the following factors may be relevant:
    - The duration and frequency of the contravention, including how long the contravention lasted and when it was identified;
    - Whether the contravention revealed serious or systematic weaknesses of the management systems or internal controls relating to the licensee for which the person was responsible;
    - The impact of the contravention on the orderliness of financial markets, including whether public confidence in those markets have been damaged; and,
    - The loss or risk of loss caused to depositors, investors, policyholders, or creditors.
  - b) The extent to which contravention was deliberate or reckless;
  - c) The amount of losses incurred;
  - d) The conduct of the director or senior officer in bringing (or failing to bring) quickly, effectively and completely the contravention to the Authority's attention, the degree of cooperation the person showed during the investigation of the contravention, and any remedial steps taken since the contravention occurred;
  - e) The previous compliance history of the director or senior officer;
  - f) Previous action taken by the Authority in relation to similar behaviour; and,
  - g) Action taken by other regulatory authorities.
- 4.4.4. The Authority may also take into account, as appropriate, the particular function that the person is performing and the activities of the licensee. As such, a person who is fit and proper for a particular role in a firm may not necessarily be considered fit and proper for any other role in the same firm or with a new employer.
- 4.4.5. The Authority may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the person is not fit and proper to perform a controlled function.
- 4.4.6. In these circumstances, the principal question that the Authority will ask is whether there is evidence of personal culpability on the part of the person acting as director or senior officer or does the conduct display a lack of commercial probity. Personal culpability arises where the behaviour was deliberate or where the director or senior officer's standard of behaviour was below that which would be reasonable in the circumstances. Ordinary commercial misjudgement is in itself not sufficient to justify regulatory action.

## **5. Process for Decision-Making on Fitness and Propriety**

Where the Authority:

- a) Has determined or is considering the refusal of a person's application to act as director or senior officer; or
- b) Is exercising or is considering exercising its regulatory enforcement powers in relation to a director or senior officer,

it will follow the process as described in the Enforcement Manual.

**E4 – Personal Questionnaire**

# Cayman Islands Monetary Authority

## PERSONAL QUESTIONNAIRE

To be completed by all individuals who are required to be approved by the Cayman Islands Monetary Authority (“the Authority”) in connection with a licence holder/licence applicant under the following Laws (as amended from time to time):

**BANKS AND TRUST COMPANIES LAW (2013 Revision)**  
**COMPANIES MANAGEMENT LAW (2003 Revision)**  
**INSURANCE LAW, 2010**  
**MONEY SERVICES LAW (2010 Revision)**  
**MUTUAL FUNDS LAW (2015 Revision)**  
**SECURITIES INVESTMENT BUSINESS LAW (2015 Revision)**

### INSTRUCTIONS FOR COMPLETING THE PERSONAL QUESTIONNAIRE FORM

- This Form is to be completed in **English**.
- Answers to **ALL** questions should be **TYPED**.
- *No question should be left unanswered*. Where the Applicant believes that a question does not apply, the Applicant should write “Not Applicable”, or “N/A”.
- If there is insufficient space on the printed Form in which to answer a question, additional information can be provided on an attachment that must be initialled and dated.

**Please ensure that all answers and information are true and correct. Providing false or misleading information to the Authority constitutes a criminal offense under the Regulatory Laws and can lead the Authority to reject an application or revoke a license that has been granted on the basis of untrue or incorrect information.**

### REQUIRED DOCUMENTS

**Please attach a copy of your curriculum vitae or resume.**

**Please enclose a clear, notarized or similarly certified copy of your passport, photo driving licence or other Government issued photo identification card.**

The certifier should include their signature, name in block capitals, daytime telephone number, profession, name and address of business or official stamp, and date. Certifiers should state that it is a true copy of the original document.



**Section 1: Proposed Role****1. Name of the Institution****2. Proposed Position** *(i.e. Director, Shareholder, Manager, Controller (see footnote 1, on page 7), Officer, etc.)***Section 2: Personal Details****3. Your Full Name**Title *(Mr./Mrs./Ms., etc)*

Surname

Forename(s)

Maiden name *(if applicable)*Other name(s) commonly known by *(if any)***4. Previous name(s) by which you have been known** *(if any)***5. Date of Birth** *(dd/mm/yyyy)***6. Place of Birth**

Town

State

Country

**7. Nationality, and how it was acquired** *(e.g. Birth, Naturalization, Marriage)**(If you hold more than one Nationality, please provide details for all Nationalities currently or previously held)***8. Current residential address** *(with relevant dates)***Address Line 1** *(Street Address)***Address Line 2** *(Apartment, suite, unit, building, floor, etc.)*

City

State/Province/Region

Zip/Postal

Country

**Dates at this Address** *(mm/yyyy)*

From

To

<p><b>9. Previous residential addresses during the last <u>ten</u> years</b> <i>(with relevant dates)</i></p> <p><b>Address Line 1</b> <i>(Street Address)</i></p> <p><b>Address Line 2</b> <i>(Apartment, suite, unit, building, floor, etc.)</i></p> <p><b>City</b></p> <p><b>State/Province/Region</b></p> <p><b>Zip/Postal</b></p> <p><b>Country</b></p> <p><b>Dates at this Address</b> <i>(mm/yyyy)</i> <span style="float: right;"><b>From</b> <b>To</b></span></p>
<p><b>Previous residential address 2:</b></p> <p><b>Address Line 1</b> <i>(Street Address)</i></p> <p><b>Address Line 2</b> <i>(Apartment, suite, unit, building, floor, etc.)</i></p> <p><b>City</b></p> <p><b>State/Province/Region</b></p> <p><b>Zip/Postal</b></p> <p><b>Country</b></p> <p><b>Dates at this Address</b> <i>(mm/yyyy)</i> <span style="float: right;"><b>From</b> <b>To</b></span></p>
<p><b>Previous residential address 3:</b></p> <p><b>Address Line 1</b> <i>(Street Address)</i></p> <p><b>Address Line 2</b> <i>(Apartment, suite, unit, building, floor, etc.)</i></p> <p><b>City</b></p> <p><b>State/Province/Region</b></p> <p><b>Zip/Postal</b></p> <p><b>Country</b></p> <p><b>Dates at this Address</b> <i>(mm/yyyy)</i> <span style="float: right;"><b>From</b> <b>To</b></span></p>
<p><b>Previous residential address 4:</b></p> <p><b>Address Line 1</b> <i>(Street Address)</i></p> <p><b>Address Line 2</b> <i>(Apartment, suite, unit, building, floor, etc.)</i></p> <p><b>City</b></p> <p><b>State/Province/Region</b></p> <p><b>Zip/Postal</b></p> <p><b>Country</b></p> <p><b>Dates at this Address</b> <i>(mm/yyyy)</i> <span style="float: right;"><b>From</b> <b>To</b></span></p>
<p><b>Previous residential address 5:</b></p> <p><b>Address Line 1</b> <i>(Street Address)</i></p> <p><b>Address Line 2</b> <i>(Apartment, suite, unit, building, floor, etc.)</i></p> <p><b>City</b></p> <p><b>State/Province/Region</b></p> <p><b>Zip/Postal</b></p> <p><b>Country</b></p> <p><b>Dates at this Address</b> <i>(mm/yyyy)</i> <span style="float: right;"><b>From</b> <b>To</b></span></p>

**10. Do you currently have, or have you previously been assigned a unique Director ID number by the Authority?**Yes  No 

If Yes, please provide Director ID number:

**11. Are you currently or were you previously approved (within the last 10 years) by any other Financial Services Regulator?**Yes  No 

If Yes, please provide details below:

Name of Regulator	Country	Position Held	Name of Entity	Date Approved (MM/YY)	Date Approval Ceased (MM/YY)

**12. Do you have any pending applications with any other Financial Services Regulator?**Yes  No 

If Yes, please provide full details, including Name of Regulator, Country and Nature of Application:

**Section 3: Professional Qualifications**

13. Do you hold any Professional qualifications (e.g. CPA, CFA, TEP)?

Yes  No

If Yes, Specify the following in **each** case:

Qualification	Name of Institution	Address of Institution	Status <sup>1</sup>	Year Obtained
		Address Line 1 Address Line 2 City State/Province/Region Zip/Postal Country		
		Address Line 1 Address Line 2 City State/Province/Region Zip/Postal Country		
		Address Line 1 Address Line 2 City State/Province/Region Zip/Postal Country		

**Section 4: Academic Qualifications**

14. Do you hold any Academic qualifications (e.g. BA, LLB, MBA, PhD)?

Yes  No

If Yes, Specify the following in **each** case:

Qualification	Name of Institution	Address of Institution	Year Obtained
		Address Line 1 Address Line 2 City State/Province/Region Zip/Postal Country	
		Address Line 1 Address Line 2 City State/Province/Region Zip/Postal Country	
		Address Line 1 Address Line 2 City State/Province/Region Zip/Postal Country	
		Address Line 1 Address Line 2 City State/Province/Region Zip/Postal Country	

**Section 5: Career History**

<sup>1</sup> Please indicate status of qualification or of membership in designating body, if applicable (e.g. current/active, inactive, suspended etc.)

Beginning with your current occupation or employment, please give full details of all occupations and employment during the last **ten** years, leaving no period unaccounted for. Continue on a separate signed sheet if necessary.

If there are any gaps in the employment history, please provide an explanation.

<p><b>15. Current occupation:</b></p> <p><b>Name of Employer</b></p> <p><b>Address Line 1</b> <i>(Street Address)</i></p> <p><b>Address Line 2</b> <i>(Apartment, suite, unit, building, floor, etc.)</i></p> <p><b>City</b></p> <p><b>State/Province/Region</b></p> <p><b>Zip/Postal</b></p> <p><b>Country</b></p> <p><b>Dates of Employment</b> <i>(mm/yyyy)</i> <span style="float: right;"><b>From</b> <span style="margin-left: 100px;"><b>To</b></span></span></p>			
<b>Position Held</b>		<b>Nature of business</b>	
<p><b>Employment Reference Details</b></p> <p><i>Name</i></p> <p><i>Position</i></p> <p><i>Contact #</i></p> <p><i>Email</i></p>			

<p><b>Previous occupation 1:</b></p> <p><b>Name of Employer</b></p> <p><b>Address Line 1</b> <i>(Street Address)</i></p> <p><b>Address Line 2</b> <i>(Apartment, suite, unit, building, floor, etc.)</i></p> <p><b>City</b></p> <p><b>State/Province/Region</b></p> <p><b>Zip/Postal</b></p> <p><b>Country</b></p> <p><b>Dates of Employment</b> <i>(mm/yyyy)</i> <span style="float: right;"><b>From</b> <span style="margin-left: 100px;"><b>To</b></span></span></p>			
<b>Position Held</b>		<b>Nature of business</b>	
<p><b>Employment Reference Details</b></p> <p><i>Name</i></p> <p><i>Position</i></p> <p><i>Contact #</i></p> <p><i>Email</i></p>			

**Previous occupation 2:**

Name of Employer

Address Line 1 *(Street Address)*

Address Line 2 *(Apartment, suite, unit, building, floor, etc.)*

City

State/Province/Region

Zip/Postal

Country

Dates of Employment *(mm/yyyy)*

From

To

Position Held

Nature of business

**Employment Reference Details**

*Name*

*Position*

*Contact #*

*Email*

**Previous occupation 3:**

Name of Employer

Address Line 1 *(Street Address)*

Address Line 2 *(Apartment, suite, unit, building, floor, etc.)*

City

State/Province/Region

Zip/Postal

Country

Dates of Employment *(mm/yyyy)*

From

To

Position Held

Nature of business

**Employment Reference Details**

*Name*

*Position*

*Contact #*

*Email*

**Section 6: Appointments / Shareholdings**

16. Are you now, or have you previously been (during the last **ten** years) a:

- a) Director or Controller<sup>2</sup> of any 'body corporate'?  
 b) General Partner of a Partnership?

Yes  No

If Yes, Specify the following in **each** case:

Name of Entity	Role	Country of Incorporation/Domicile	Nature of Business	From - To (MM/YY)

17. Are you now, or have you previously (during the last 10 years) held a shareholding interest in a financial institution<sup>3</sup>?

Yes  No

If Yes, Specify the following in **each** case:

Name of Company	Percentage holding	Country of Incorporation	Nature of Business	From - To (MM/YY)

<sup>2</sup> A Controller includes

- (1) any person who is entitled to exercise control of 10% or more of the voting power over the institution or over another company of which it is a subsidiary;
- (2) any person, whether a shareholder or not, in accordance with those directions or instructions the directors of the institution, or of another company of which it is a subsidiary, are accustomed to act.

Where a controller is a body corporate the Authority will look through that body to the ultimate controller from whom the above information will be sought

<sup>3</sup> Shareholding interest in Banks, Trust Companies, Insurance Companies, Investment Companies, or other financial institutions – greater than 5%

**Section 7: Fitness and Propriety**

In any case where the response is **Yes** to any of the questions in this section, **full** details should be given on a separate sheet and referenced to the appropriate question.

<p><b>18.</b> Have you at any time been involved with an application for regulatory approval in any jurisdiction where that application has been refused or withdrawn? If so, give full particulars.</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p><b>19.</b> Have you at any time been charged or convicted of any offence (other than (a) an offence committed when you were under the age of 18 years unless the same was committed within the last ten years, or (b) an offence in connection with the use or ownership of a motor vehicle which was tried in a court of summary jurisdiction) by any court, whether civil or military, in any jurisdiction? If so, give full particulars of the charge and if convicted, the date of conviction, the offence and the penalty imposed.</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p><b>20.</b> Is there any outstanding civil litigation against you (including in your capacity as a trustee of a trust) or any company of which you are an officer; or are there any current proceedings issued by you? If so, give full particulars.</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p><b>21.</b> Have you ever, at any time, been the subject of an investigation in relation to a financial institution? If so, give full particulars.</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p><b>22.</b> Have you, anywhere, been censured, disciplined or criticised by any professional body to which you belong or have belonged, or have you ever held a practising certificate subject to conditions? If so, give full particulars.</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p><b>23.</b> Have you ever been required to give evidence in any trial or proceedings involving fraud, dishonesty or similar matters, other than as an expert witness? If so, give full particulars.</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p><b>24.</b> Have you, or any body corporate, trust, partnership or unincorporated institution with which you are, or have been associated as a director, shareholder, manager, officer, controller, or trustee, been the subject of an investigation, anywhere, by a governmental, professional or other regulatory body? If so, give full particulars.</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p><b>25.</b> Have you, anywhere, been suspended, placed on required leave or dismissed from any office or employment or barred from entry to any profession or occupation? If so, give full particulars.</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p><b>26.</b> Have you ever been disqualified from acting as a director of a company or from acting in a management capacity or conducting the affairs of any company, partnership or unincorporated association? If so, give full particulars.</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p><b>27.</b> Have you been adjudicated bankrupt by a court in any jurisdiction? If so, give full particulars.</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p><b>28.</b> Have you failed to satisfy any debt adjudged due and payable by you as a judgement-debtor under an order of a court in any jurisdiction? If so, give full particulars.</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p><b>29.</b> Have you, in connection with the formation, control or management of a body corporate, partnership, unincorporated institution, or in connection with acting as trustee of a trust been adjudged by a court, in any jurisdiction, civilly or criminally liable for any fraud, misfeasance or other misconduct by you towards such a body, company or trust or towards any members thereof? If so, give full particulars.</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p><b>30.</b> Has any body corporate, partnership or unincorporated institution with which you</p>	



<p>were associated as a director, shareholder, manager, officer or controller, anywhere, been compulsorily wound up or made any compromise or arrangement with its creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims, either while you were associated with it or within one year after you ceased to be associated with it. If so, give full particulars.</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p><b>31.</b> Has any body corporate, partnership or unincorporated institution with which you were associated as a director, shareholder, manager, officer or controller, anywhere, had its authorisation revoked? If so give full particulars</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
<p><b>32.</b> In carrying out your duties will you be acting on the directions or instructions of any other person? If so give full particulars.</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>

I CERTIFY that the above information is complete and correct to the best of my knowledge and belief and I undertake that, as long as I continue to be a director, shareholder, manager, officer or controller of an institution authorized under any of the above Laws, I will notify the Authority of any material changes affecting the completeness of the answers to questions 18-32 above within a period of twenty-one days.

I also hereby AUTHORISE the Authority to make such enquiries and seek such further information as it thinks appropriate in verifying the information given in this Personal Questionnaire, or in any other documents submitted as part of this application, for the purposes of performing its due diligence and background checks. I understand that the results of these checks may be disclosed to the person who submitted this application.

Date: \_\_\_\_\_ Signed: \_\_\_\_\_

**Section 8: Supplemental Information**

Please include here, any additional information indicated in previous sections of this Form. If there is insufficient space, please continue on a separate page and clearly identify the section and question to which the additional information relates<sup>4</sup>.

Section	Question	Information

<sup>4</sup> Please indicate how many additional sheets are being submitted: \_\_\_\_\_


### **E5 - Licences to be Gazetted**

New licence approvals, licence cancellations, suspension of licence, licence revocations, and change of name for licensees are generally gazetted. However, there are exceptions. These include licensees under the Banks and Trust Companies Law (2013Revision) (except for cancellations) and the Mutual Fund Law (2015Revision).

On a monthly basis, a memorandum should be sent to Government Information Services (GIS), with regard to all new licence applications, terminations, and change of name to be gazetted. The following procedures detailed the steps taken by Administrative Assistants in the supervisory divisions:

### **Prepare Memorandum**

- The Administrative Assistant prepares a memorandum to GIS listing new licence, termination, revocation or change of name that has accumulated throughout the month.
- Submit to the Head of Division for approval.
- Once the memorandum is signed, the Administrative Assistant sends the memorandum via electronic mail to GIS, to be printed in the next issue of the gazette. (A copy should be sent to the Managing Director for informational purposes)
- On a monthly basis the Administrative Assistant, reviews newly issued gazette, and makes a photocopy of the relevant sections for the files.

## **E6 - Payments Procedures**

Upon the receipt of a cheque by the Authority the following procedure must be followed:

**Deliver cheque to the Treasury Analyst in the Finance Unit for processing.**

### **Upon receipt**

- Photocopy the cheque and covering letter;
- The Treasury Analyst retains the cheque and a copy of the covering letter and a copy of the cheque and the original covering letter are sent to the relevant division.
- The Treasury Analyst processes the cheque.

## **THE SUPERVISORY APPROACH – OTHER PROCESSES**

### **F1 - Elements of the On-site Inspection Process**

There are three parts to the on-site inspection process: fact-finding and evaluation, discussions with management, and the writing of the inspection report.

#### **Fact-finding**

Fact-finding is the most extensive and critical of the inspection activities. Fact finding serves as the basis for the remainder of the inspection process and assists in the evaluation of the condition of the institution; the content and tone of the discussions with management; the drafting of the inspection report; and the type and extent of any further supervisory action. The purpose of this activity is to develop accurate factual information that discloses the condition of the institution to management, as evaluated by the examiner. To ensure that an objective presentation of the issues is made, examiners should also consider, where possible, equally reliable and pertinent facts presented by management.

#### **Meetings and discussions with management**

Meetings and discussions with management may take place prior to the inspection, during the inspection, and post inspection.

The objectives of these discussions are to:

- Foster a better understanding of the respective roles of management and the Authority's examiners;
- Inform management of the examination scope and the examiner's evaluation of the institution's condition;
- Obtain information concerning future plans and proposed changes in policies; and
- Obtain a commitment to initiate appropriate corrective action.

#### **Initial meeting**

During the initial meeting with the management of the licensee, all of the inspection team will be in attendance. The Authority will confirm to management the structure and scope of the inspection, the likely time period that the inspection team will be on-site, and key licensee staff that will be required to be available to the inspection team. The Authority will identify at this early stage any recent significant changes to or particular operating characteristics of the company, which may affect the inspection work proposed.

#### **During the inspection**

The main purpose of the discussion(s) is, where possible, to reach agreement on the accuracy of the issues presented and the course of action which will follow. During the inspection the discussion(s) with management may also be used to corroborate findings and learn more information on certain issues. The examiner will not only

present the factual evidence and conclusions that have been determined, but will also be receptive to evidence presented by management that may be contrary to the inspector's findings.

Meetings should also be held with the licensee's auditors to discuss operational controls, particularly if there are any weaknesses in operations, controls or audits.

### **Closing Meeting**

Once the examiner has reached specific conclusions about the present condition and future prospects of the institution, or has noted serious deficiencies or detrimental trends in the condition of the licensee, those conclusions and any recommendations should be communicated to the senior management of that particular institution. The closing meeting provides the licensee with the opportunity to respond verbally and clarify issues pertaining to the preliminary findings of the inspection.

No critical matters should appear in the inspection report, which were not discussed during this meeting.

### **The importance of fact-finding and management meetings**

Upon completion of the on-site inspection process, the Authority will be in a position to identify to what extent the licensee is effectively identifying, analysing and managing its overall business operation and in compliance with all relevant laws, regulations and best practice.

An understanding of the licensee and its environment includes having a firm grasp of its activities and associated risks, the involvement of the board of directors and the role of auditors. It also involves an in-depth knowledge of trends in the given industry and assessments of the appropriateness of reliance on internal and external audits, the adequacy of management controls and the quality of management.

In order to assist the detection of solvency problems the inspection will focus on areas that are material and of greater risk. This involves an assessment of the risks inherent in the licensee's activities as well as the risks in the business sector the licensee is involved in. It also involves analysing the financial statements for signs of any potential risks or problems.

With regard to compliance problems, the inspection process will involve a review of the licensee's activities for compliance with legislation, regulations and supervisory rules. All problems should be documented and handled in a manner consistent with their materiality and impact on the licensee.

The objective of gathering information on policy matters involves gathering information that may be used as the basis for recommending changes to legislation, regulations and industry guidelines. It includes relevant information relating to current policy issues that are difficult to administer, causing institutions to make decisions other than intended, or that are being interpreted in different ways as indicated by unusual activities.

In addition to detecting weaknesses and deficiencies, examiners must also facilitate the resolution of the problems. This involves developing recommendations for corrective action and following up to ensure that the licensee has complied with or implemented the recommendations.

### **Report writing**

Report writing is important in that the effectiveness of the supervisory process is dependent upon an official written record of the factual findings, conclusions and recommendations put forward. Examiners must concisely and accurately communicate their findings in the report. Proper presentation of all essential information is fundamental to an adequate understanding by both the licensee's management and the Authority's supervisory personnel. The examiner's concerns and the impact they may have on the integrity of the licensee and the business it conducts, should be presented with sufficient clarity to enable the reader to place the issues involved and the severity of the conclusions into proper perspective. This includes a full and accurate presentation of facts and an analysis of any adverse findings, conclusions or discussions with management. Lastly, where deficiencies or weaknesses are found, the report will put forward recommendations and suggestions, which are directed to minimising the risks and ensuring compliance with regulations, policies and best practice.



## F2 - Procedures for Conducting In-House Meetings with Licensee Representatives

It is a policy of the Cayman Islands Monetary Authority to meet annually with representatives of entities licensed in the Cayman Islands to discuss their operations. In the case of entities that have limited/restricted activities, such as some bank branches, the Authority may exempt them from annual meetings and require that they schedule meetings biennially.

### Scheduling Meetings

This may be at the instigation of the licensee, if not the Analyst responsible for the licensee will contact the licensee to schedule a meeting.

### Timetable of meetings

Licensee	Frequency of meeting
<b>Banks</b>	
Private, Affiliate, and Subsidiaries	Annual
Branches	Biennial (Every 2 years)
<b>Trust Companies</b>	Annual
<b>Insurance Companies</b>	Quarterly/Annually
Class A Insurers	Bi-annually – depending on nature of operations, etc. and preference of the directors, the Authority may meet annually
Class B Insurers	Ad-hoc - if and when directors/ managers want to discuss a particular issue or if the Authority has concerns
Both Class A and Class B Insurers	Quarterly/Annually
<b>Companies Management</b>	
Companies Management Licence	Annual
Corporate Services Licence	Annual
<b>Securities Investment Businesses</b>	Annual
<b>Mutual Fund Administrators</b>	
Full	Annual
Restricted	Biennial (Every 2 years)
Exempted	Biennial
<b>Mutual Funds (All Types)</b>	Ad-Hoc

1. The frequency of visits may also depend on the level of activity the particular institution is undertaking. For example, licensees with a low level of activity may be waived from visiting annually.
2. The Administrative Assistant for the supervisory division or the Executive Secretary to the Managing Director normally books the meetings at a time mutually convenient for both the licensee's representatives and the Authority's representatives.
3. Once a convenient time has been set, attendees are notified. Attendees normally comprise of the Managing Director and/or Head of Division and/or Deputy Head of Division and the Chief Analyst /Senior Analyst/Analyst responsible for the licensee. In the event that the Managing Director, Head of Division or Deputy Head of Division are unable to attend the meeting, a Senior Analyst may act as the Interviewer. In the event that the Analyst for the

institution is unable to attend the meeting, another Analyst from the division will substitute.

### **Preparing Pre-Interview Notes**

1. Once the Analyst receives electronic notice of the meeting they are required to prepare a pre-interview note on the licensee at least two days prior to the meeting in order to brief the Interviewer on the details of the licensee.
2. Once the pre-interview note is completed copies are provided to the Interviewer(s) and the Analyst maintains a copy. The pre-interview note will include the following details:
  - a. Licensee Name
  - b. Licensee Status
  - c. Category of Licence
  - d. Type of Licence
  - e. Country
  - f. Supervisory Guidelines for the particular Licensee
  - g. Any restrictions on the Licensee's activities
  - h. Historical Background of the Licensee and group (where applicable)
  - i. Activities of the Licensee
  - j. Interviewer(s) & Analyst
  - k. Date & Time of the Meeting
  - l. Attendees
  - m. Date & Time of Last Meeting
  - n. Interviewer & Analyst for the Last Meeting
  - o. Attendees at the Last Meeting
  - p. Main Points Discussed During Last Meeting
  - q. Main Points to Discuss During This Meeting
  - r. Overview of Key Regulatory issues: -
    - i. Analysis of the latest prudential reports submitted by the licensee
    - ii. Summary of the most recent Audited Financial Statements
    - iii. Update on any new business strategies and future plans
    - iv. Where applicable, update on the Political & Economic Climate of the Home Country.
    - v. News releases that may impact the licensee
    - vi. Update on progress of any regulatory issues impacting the licensee
    - vii. Any other important issues as necessary

### **Conducting The Meeting**

Meetings are held at the Cayman Islands Monetary Authority.

### **Post Meeting Note**

1. File notes are prepared for all meetings and saved in MARS under the tab entitled '**File Notes**' for that particular Licensee.
2. The file note includes the Institution's name, the Licence Number, the Note Date, the Subject and the File Note Type i.e., Prudential Meeting or Ad hoc Meeting. The file note includes:
  - a. Details of the key issues discussed;

- b. A list of any items submitted to the Authority during the meeting i.e., audited financial statements, annual reports, copies of presentations, etc.; and
  - c. A list of follow up items where necessary.
3. Pass on the file note to the Interviewer (usually the Managing Director, Head of Department, Deputy Head of Department or Chief Analyst) for their review.
4. Post review, the file note is returned to the Analyst and any necessary changes are made.
5. Final copy is signed by the Analyst and initialled by the Interviewer indicating that they have reviewed it and agree with the contents.
6. The file note is placed in the Institution's correspondence file.

**Note any follow up items**

### **F3 - Change of Name**

When a request is received to change the name of a licensee the following procedures should be followed:

#### **Check proposed new name is suitable**

Check with other divisions of the Authority to confirm that the licensee can use the new name without being in contravention of any other regulatory laws. (For example: use of words such as bank, insurance, trust in the name). If the licence holder has other licences with Authority, ensure that the relevant Divisions are also aware of the name change.

#### **Approve the change in name**

If the proposed new name is suitable, advise the client that the Authority has no objection to the change in name. If the proposed new name is **not** suitable, advise the client that the Authority will not approve the proposed change in name.

#### **Check that the required documentation has been supplied to the Authority**

If the change in name is approved then the following documentation must be obtained from the licensee:

- Original Licence/certificate (for cancellation);
- Certificate of change of name (issued by Registrar of Companies); and
- Resolution by the Shareholders/Directors to have the name of the company changed.

#### **Update MARS**

##### **Print Name Change Certificate**

The name change certificate can be printed at the time MARS is updated, or at a later date.

##### **Print new flyleaf and attach to the inside cover of the Fund's file.**

#### **Issue licence in the new name**

- When all the outstanding requirements have been met, prepare letter confirming the change of name.
- Once the name change letter and certificate have been signed by the Head/Deputy of Division, make two copies of the letter and a copy of the certificate.
- Place copy of the letter and the copy of the certificate on the Fund's file.

#### **Mail letter of confirmation and new certificate to licensee**

#### **Gazette the change of name**

See Licences to be Gazetted Procedures, Appendix E4.

## **F4 – Regulatory Policy - The Approval of an Auditor For a Regulated Institution**

Issued May 2002

Revised October 2003

### **1. Statement of Objectives**

The various regulatory laws require that the Authority approve the auditors of regulated institutions. This policy will be applied when auditors apply to the Authority for approval. It is expected that approved auditors will continue to meet this policy on an ongoing basis.

### **2. The Policy**

#### **2.1 Assessing the acceptability of an auditor in auditing a regulated institution**

The following criteria will be applied for approved auditors of regulated entities:

- Sufficient Expertise and Resources
- Continuing Professional Education
- Quality Assurance Reviews
- Independence
- Professional Indemnity Insurance

#### **2.2 Sufficient Expertise and Resources**

2.2.1 The firm should have relevant experience in auditing in the respective industry, based on assignments of comparable size and complexity. In addition, staffing of the engagement should include sufficient specialized skills appropriate to the industry of the regulated institution. In the assessment of resources, the factors to be considered would include: (a) whether the local firm is an extension of an international firm or a separate legal entity; (b) whether the firm will be undertaking local sign offs or 'full' audits; and, (c) the industry sectors which it will audit.

2.2.2 Partners signing off on audit engagements, or any member of the firm with authority to sign off the audit, are expected to possess an internationally recognised accounting qualification. For the purposes of this policy, the following would be considered internationally recognised accounting bodies: The Institute of Chartered Accountants in England and Wales, The Institute of Chartered Accountants in Ireland, The Institute of Chartered Accountants of Scotland, The Canadian Institute of Chartered Accountants, The Association of Chartered Certified Accountants, The American Institute of Certified Public Accountants, or any other Professional Body or Institute approved by the Authority. As a general rule, the Authority

would expect partners to have a minimum of five years auditing experience of financial institutions at a management level, in the respective industry sectors or businesses they are auditing. If a firm should not have partners with the necessary experience, the Authority may at its discretion limit the industries or licensees which the firm may be approved to audit.

### **2.3 Continuing Professional Education**

All professional accounting personnel are expected to perform relevant continuing professional education and maintain good standing with their international accounting body.

### **2.4 Quality Assurance Reviews**

2.4.1 The Authority expects that the firm has in place a competent quality assurance process that ensures that the firm's internal and any externally imposed standards are being complied with.

2.4.2 It is expected that the quality control process would include:

- (a) Pre-established guidelines requiring concurring partner review of the audit procedures and audit work, and,
- (b) Internal quality control reviews of the firm's processes and methodology by experts of that firm on a regular basis.

### **2.5 Independence**

2.5.1 Independence is important in order to maintain an objective frame of mind in accomplishing the audit. All staff must sign off annually on internal firm independence declarations, and the firm must have clear and comprehensive procedures for ensuring independence in relation to new engagements.

- a) The applicant firm of accountants should follow the guidance in the International Federation of Accountants (IFAC) Code of Ethics Section 8: Independence when designing and implementing their independence procedures.

2.5.2 If the auditors supply other services to the licensee in addition to auditing, for example internal audit services, the nature and extent of these services should be kept under review by the firm, in order to ensure that the auditors' objectivity is not affected.

2.5.3 In addition, audit firms are not permitted to audit financial statements of licensees where it (or a closely related entity, for example, a corporate services company with common owners to the audit firm) prepared the financial statements.

2.5.4 Notwithstanding the examples above, there may be other circumstances that would result in a firm being deemed not independent or objective and audit firms must be vigilant to this possibility and take appropriate steps to ensure that the audit firm is independent and objective.

## **2.6 Professional Indemnity Insurance**

The Authority would expect audit firms to have adequate professional indemnity insurance of a minimum of CI\$500,000 for any one claim and CI\$1,000,000 in aggregate. In meeting this Policy, the Authority would accept an extension of the professional indemnity insurance from a member firm.

## **2.7 Sanctions**

Failure to comply with this policy may lead to the removal of the auditor from the list of approved auditors.

## **2.8 Local Audit Sign-Off**

This policy applies to all provisions of the regulatory laws where accounts are to be audited annually by an auditor approved by the Authority, and includes the references to approved auditors in the Local Audit Sign-Off Policy issued by the Authority for mutual funds and mutual fund administrators.

## **F5 - Change of Auditors**

This procedure details the operations of the supervisory divisions upon notification by a licensee of a change in their auditor and the documentation that must be supplied by the licensee to the Authority.

### **Check that the required documentation has been supplied to the Authority**

A licensee should outline in a letter the reason(s) for wishing to remove their current Auditor along with the name of the proposed Auditor.

### **Confirm that there were no suspicious circumstances surrounding the dismissal of the previous Auditors**

Obtain confirmation from the Auditors being dismissed of the reasons for the termination of their services. If there are any suspicions raised, bring them to the attention of the HOD immediately.

### **Check that the proposed new Auditor is on the Authority's list of local approved auditors**

The newly appointed Auditor must appear on the list of local auditors that have been approved by the Authority.

### **Confirm the New Auditor's willingness to act**

The newly appointed Auditor must supply the Authority with a letter of acceptance stating that they are willing to accept the appointment as Auditor for the licensee and that they are aware of their obligations as Auditor under the appropriate regulatory Law.

### **Obtain confirmation from present Auditor that they will no longer provide services to company**

### **Make recommendation to HOD**

### **Submit application to HOD for approval**

### **Issue an approval letter**

When all the outstanding requirements have been met, prepare an approval letter and submit along with the licensee's file to the HOD for his review and signature.

### **Mail the approval letter to the licensee and place a copy of the correspondence on the licensee's file**

### **Obtain confirmation from the Auditor**

Obtain an Auditor's letter of consent stating that they have accepted the appointment as auditor of the licensee.

### **Update MARS**



## **F6 - Change in Principal/Registered Office or Authorised Agent**

The following procedure should be followed when a licensee changes its Agent, Registered/Principal Office.

### **Check that the required documentation has been supplied to the Authority**

A licensee should outline in a letter the reasons for changing/removing its current Agent, Registered/Principal office. The letter should further state the name of the newly appointed Agent, Registered/Principal office.

### **For Trust Companies only confirm the new agents willingness to act**

The newly appointed Agent must supply the Authority with a letter stating that they are willing to accept the appointment as Agent for the licensee and that they are aware of their obligations as Agent under the Banks & Trust Companies Law (2013Revision). If the agent is a person, a personal questionnaire is to be completed and a full due diligence check completed.

### **Issue an approval letter**

**Mail the approval letter to the licensee and place a copy of the correspondence on the licensee's file**

**Update MARS**

## **F7 - Letters of Good Standing When Fees and Filing of all Supervisory Reports are Up-To-Date**

All requests for Letters of Good Standing (“LOG”) must be submitted to the Authority in writing.

### **Determine the position of the licensee**

#### **Confirm that all outstanding fees have been paid**

- Select on the tab entitled ‘**Fees**’, this will show a list of the dates that fees were paid by the licensee.
- A fee of \$800 is charged for the processing of the LOG and paid prior to issue.

#### **Confirm that all statutory forms have been submitted**

- Review the list to confirm whether the latest supervisory report has been submitted.
- If forms have not been submitted verify through a review of the licensee’s file. For reports on file, which have not been logged in the MARS System, log into MARS.
- Once it has been confirmed that the fees and filing of supervisory reports are up-to-date, the letter can be prepared for the licensee.

#### **Prepare the letter of good standing**

- Letters of Good Standing, should **not** be addressed to, “*To Whom It May Concern*’ and should be in compliance with the Letter of Good Standing procedure (Appendix G5).

#### **Mail the letter of good standing**

All LOG must be approved and signed by the HOD.

#### **File correspondence**

A copy of the letter must be filed and recorded in MARS under ‘file notes’.

## **F8 - Preparing Letters of Good Standing When Extensions for Filing Supervisory Reports Have Been Granted**

### **Granting of Extensions**

1. The Authority may grant extensions for the filing of supervisory reports. An extension of two weeks may be granted without explanation from the licensee for filing of quarterly reporting schedules for licensees without supervisory concerns. Any extension requested for over two weeks would require the licensee to give an acceptable explanation for the extension.
2. An extension of one month may be granted without explanation from the licensee for filing of the Annually Audited Financial Statements for licensees without supervisory concerns. Any extension requested for over one month would require the licensee to give an acceptable explanation as well as promise to file a draft copy of the Audited Statements as soon as possible.
3. In the event that a licensee requests a Letter of Good Standing but has not yet filed either or both of quarterly reporting schedules or the Annually Audited Financial Statement but has been granted an extension (up to two weeks for un-audited quarterly reports or up to one month for annual audited reports), the Authority may still issue a Letter of Good Standing stating that an extension for the filing of supervisory reports has been granted. (See example letter attached).

**NOTE:** Letters of Good Standing are not issued for licensees that have been given over two weeks extension for filing of quarterly un-audited reports or over one month for audited reports.

## F9 - Sample Letter of Good Standing

Mr. XXXXX  
Manager - Credit Department  
YYYYYYYYYYYYYYYY  
P.O. Box GT  
Grand Cayman.

Dear \_\_\_\_\_,

YYY Company

The YYY is the holder of a <enter type> Licence effective <enter date of licence commencement> and issued under the <state law licence issued under> pertaining at that time.

At the date of writing, the Company is up-to-date with its filings to the Cayman Islands Monetary Authority and, on the basis of the information submitted to the Authority, is in compliance with the <enter name of law>.

Yours faithfully,

XX  
Head of XX Division

Note: For consistency purposes, when issuing Letter of Good Standing for **banking** licensees, the letter should reference the appropriate law in accordance with the following:-

1. Licences issued prior to 1989:  
“... issued (date) under The Banks and Trust Companies Regulation Law (Revised)”.
2. Licences issued between 1989 and 1995:  
“...issued (date) under The Banks and Trust Companies Law, 1989”.
3. Licences issued between 1995 and 2000:  
“...issued (date) under The Banks and Trust Companies Law, (1995 Revision)”.
4. Licences issued between 2000 and 2001:  
“...issued (date) under The Banks and Trust Companies Law (2000 Second Revision)”.
5. Licences issued after 2001 and 17<sup>th</sup> March 2003:  
“...issued (date) under The Banks and Trust Companies Law (2001 Revision)”.

6. Licences issued after 17<sup>th</sup> March 2003:  
“...issued (date) under The Banks and Trust Companies Law (2003 Revision)”.

## **F10 - Reporting Schedule**



REPORTING SCHEDULE FOR PRUDENTIAL REPORTS, STATISTICAL RETURNS AND  
FINANCIAL INFORMATION  
TO THE  
CAYMAN ISLANDS MONETARY AUTHORITY  
2014 - 2015

1. This schedule covers the period from *1 December 2014 to 31 December 2015*. Not all the reports listed are required from each reporting institution. Individual institutions that have been specifically requested by the Cayman Islands Monetary Authority to complete certain forms, or to report under a different frequency than shown, should continue to follow their special arrangements.
2. Reporting institutions are reminded to submit all forms promptly and within the stipulated deadlines.
3. Any foreseen difficulty in meeting the required deadlines should be reported to the Cayman Islands Monetary Authority Divisional Owner, seeking formal extensions within the application period stipulated where necessary. The contact details for these can be found at the end of this document.

Reporting Date	Forms	Reporting deadlines	Maximum Extension Period/s available <sup>1</sup>	Divisional Owner
	<b>Entity: BANKS &amp; TRUST COMPANIES</b>			
Year-End/ Annual	Banks and Trust Companies - Audited Financial Statements	3 months after financial year-end	90 calendar days in 30 calendar day increments	Banking Division
	<b>Entity: DEVELOPMENT BANKS</b>			
Year-End/ Annual	Audited Financial Statements	7 months after financial year-end	90 calendar days in 30 calendar day increments	Banking Division
Year-End/ Annual	Auditor's certificate of the existence of adequate procedures under MLR & PCCL	3 months after financial year-end	90 calendar days in 30 calendar day increments	Banking Division
	<b>Entity: CREDIT UNIONS</b>			
Year-End/ Annual	Audited Financial Statements	3 months after financial year-end	90 calendar days in 30 calendar day increments	Banking Division
	<b>Entity: BUILDING SOCIETIES</b>			
Year-End/ Annual	Audited Financial Statements	14 days after presentation at the annual or other general meeting	90 calendar days in 30 calendar day increments	Banking Division
	<b>Entity: MONEY SERVICES BUSINESS</b>			
Year-End/ Annual	Audited Financial Statements	3 months after financial year-end	90 calendar days in 30 calendar day increments	Banking Division
Year-End/ Annual	Auditor's certificate of the existence of adequate procedures under the PCCL	3 months after financial year-end	90 calendar days in 30 calendar day increments	Banking Division
	<b>Entity: INVESTMENTS &amp; SECURITIES</b>			
Year-End/ Annual	Mutual Funds - Fund Annual Return (FAR) & Audited Financial Statements	6 months after financial year-end	90 calendar days in 30 calendar day increments	Investments & Securities
Year-End/ Annual	Mutual Fund Administrators - Audited Financial Statements	6 months after financial year-end	90 calendar days in 30 calendar day increments	Investments & Securities
Year-End/ Annual	Securities Investment Business Companies (Licensees) - Audited Financial Statements	6 months after financial year-end	90 calendar days in 30 calendar day increments	Investments & Securities
Year-End/ Annual	Securities Investment Business Companies (Licensees) - Certificate of Compliance	6 months after financial year-end	90 calendar days in 30 calendar day increments	Investments & Securities
	<b>Entity: COMPANY MANAGERS &amp; UNRESTRICTED TRUSTS</b>			
Year-End/ Annual	Company Managers' & Unrestricted Trusts - Audited Financial Statements	6 months after financial year-end	30 calendar days	Fiduciary Services Division
	<b>Entity: INSURANCE COMPANIES, MANAGERS, AGENTS AND BROKERS</b> (Note: New Reporting Requirements - Insurance (Reporting) Regulations, 2013)			
Year-End/ Annual	Class 'A' (Approved External) Insurer's Annual Return & Audited Financial Statements	6 months after financial year-end	60 calendar days	Insurance Division
Year-End/ Annual	Class 'A' (Approved External) Confirmation of funds required per section 15 (1) of the Insurance Law, 2010	2 months after financial year-end	No extensions available	Insurance Division
Year-End/ Annual	Class 'A' (Locally Incorporated) Insurer's Annual Return & Audited Financial Statements	6 months after financial year-end	60 calendar days	Insurance Division
Year-End/ Annual	Class B, 'B'(i), B (ii), B (iii), C, D Annual INForm Return, Annual Returns & Audited Financial Statements	6 months after financial year-end	60 calendar days	Insurance Division
Year-End/ Annual	Insurance Manager's Annual Return	6 months after financial year-end	60 calendar days	Insurance Division
Year-End/ Annual	Insurance Agent's Annual Return	6 months after calendar year-end	60 calendar days	Insurance Division
Year-End/ Annual	Insurance Broker's - Annual Return	6 months after financial year-end	60 calendar days	Insurance Division

<sup>1</sup> All reference to days are calendar days.



	Entity: ALL ENTITIES				
December 2014	Non-Compliant Accounts Form	Friday	30-Jan-2015	30 calendar days	Policy & Development
December 2015	Non-Compliant Accounts Form	Friday	29-Jan-2016	30 calendar days	Policy & Development
<b>Quarterly and Bi-Annual Forms</b>					

Reporting Date	Forms	Reporting deadlines		Maximum Extension Period/s available	Divisional Owner	
December 2014	Money Services Business Form	Friday	30-Jan-2015	30 calendar days	Banking Division	
	Banks with Controlled Subsidiary Declaration	Friday	30-Jan-2015	30 calendar days	Banking Division	
	Quarterly Return – Credit Unions & Building Societies	Friday	30-Jan-2015	30 calendar days	Banking Division	
	Company Managers', Corporate Service Providers & Unrestricted Trusts - Bi-Annual Report	Friday	30-Jan-2015	No extension available	Fiduciary Services Division	
	Private Trust Company Declaration	Friday	30-Jan-2015	No extension available	Fiduciary Services Division	
	Controlled Subsidiary Declaration	Friday	30-Jan-2015	No extension available	Fiduciary Services Division	
	Securities Investment Business Quarterly Financial Reporting Form	Friday	22-Jan-2015	30 calendar days	Investments & Securities	
	Locational Banking Statistics (LBS) Survey	Friday	30-Jan-2015	30 calendar days	Policy & Development	
	Domestic Banking Activity (DBA Form)	Friday	30-Jan-2015	10 calendar days	Policy & Development	
	Coordinated Portfolio Investment Survey (CPIS)	Friday	27-Feb-2015	60 calendar days in 30 day increments	Policy & Development	
	Quarterly Return Class 'A' Insurance Co. (Local and Approved External)	Friday	13-Feb-2015	No extensions available	Insurance Division	
March 2015	Money Services Business Form	Thursday	30-Apr-2015	30 calendar days	Banking Division	
	Quarterly Return – Credit Unions & Building Societies	Thursday	30-Apr-2015	30 calendar days	Banking Division	
	Securities Investment Business Quarterly Financial Reporting Form	Wednesday	23-April-2015	30 calendar days	Investments & Securities	
	Locational Banking Statistics (LBS) Survey	Thursday	30-Apr-2015	30 calendar days	Policy & Development	
	Domestic Banking Activity (DBA Form)	Thursday	30-Apr-2015	14 calendar days	Policy & Development	
	Quarterly Return Class 'A' Insurance Co. (Local and Approved External)	Friday	15-May-2015	No extensions available	Insurance Division	
June 2015	Money Services Business Form	Friday	31-Jul-2015	30 calendar days	Banking Division	
	Quarterly Return – Credit Unions & Building Societies	Friday	31-Jul-2015	30 calendar days	Banking Division	
	Company Managers', Corporate Service Providers & Unrestricted Trusts - Bi-Annual Report	Friday	31-Jul-2015	No extension available	Fiduciary Services Division	
	Securities Investment Business Quarterly Financial Reporting Form	Friday	22-Jul-2015	30 calendar days	Investments & Securities	
	Locational Banking Statistics (LBS) Survey	Friday	31-Jul-2015	30 calendar days	Policy & Development	
	Domestic Banking Activity (DBA Form)	Friday	31-Jul-2015	10 calendar days	Policy & Development	
	Coordinated Portfolio Investment Survey (CPIS)	Monday	31-Aug-2015	60 calendar days in 30 day increments	Policy & Development	
	Quarterly Return Class 'A' Insurance Co. (Local and Approved External)	Friday	14-Aug-2015	No extensions available	Insurance Division	
September 2015	Money Services Business Form	Friday	30-Oct-2015	30 calendar days	Banking Division	
	Quarterly Return – Credit Unions & Building Societies	Friday	30-Oct-2015	30 calendar days	Banking Division	
	Securities Investment Business Quarterly Financial Reporting Form	Thursday	21-Oct-2015	30 calendar days	Investments & Securities	
	Locational Banking Statistics (LBS) Survey	Friday	30-Oct-2015	30 calendar days	Policy & Development	
	Domestic Banking Activity (DBA Form)	Friday	30-Oct-2015	10 calendar days	Policy & Development	
	Quarterly Return Class 'A' Insurance Co. (Local and Approved External)	Friday	16-Nov-2015	No extensions available	Insurance Division	
December 2015	Money Services Business Form	Friday	29-Jan-2016	30 calendar days	Banking Division	
	Banks with Controlled Subsidiary Declaration	Friday	29-Jan-2016	30 calendar days	Banking Division	
	Quarterly Return – Credit Unions & Building Societies	Friday	29-Jan-2016	30 calendar days	Banking Division	
	Company Managers', Corporate Service Providers & Unrestricted Trusts - Bi-Annual Report	Friday	29-Jan-2016	No extension available	Fiduciary Services Division	
	Private Trust Company Declaration	Friday	29-Jan-2016	No extension available	Fiduciary Services Division	
	Controlled Subsidiary Declaration	Friday	29-Jan-2016	No extension available	Fiduciary Services Division	
	Securities Investment Business Quarterly Financial Reporting Form	Friday	22-Jan-2016	30 calendar days	Investments & Securities	
	Locational Banking Statistics (LBS) Survey	Friday	29-Jan-2016	30 calendar days	Policy & Development	
	Domestic Banking Activity (DBA Form)	Friday	29-Jan-2016	10 calendar days	Policy & Development	
	Coordinated Portfolio Investment Survey (CPIS)	Monday	29-Feb-2016	60 calendar days in 30 day increments	Policy & Development	
		Quarterly Return Class 'A' Insurance Co. (Local and Approved External)	Monday	15-Feb-2016	No extensions available	Insurance Division

BANKING SUPERVISION DIVISION					
<b>Banks with Financial Year End - (January, April, July, October)</b>					
Jan-2015	Basel II & QPRs Form	Friday	02-Mar-2015	30 Calendar Days	Banking Division
Apr-2015	Basel II & QPRs Form	Friday	29-May-2015	30 Calendar Days	Banking Division
Jul-2015	Basel II & QPRs Form	Monday	31-Aug-2015	30 Calendar Days	Banking Division
Oct-2015	Basel II & QPRs Form	Monday	30-Nov-2015	30 Calendar Days	Banking Division
<b>Banks with Financial Year End - (February, May, August, November)</b>					
Feb-2015	Basel II & QPRs Form	Monday	30-Mar-2015	30 Calendar Days	Banking Division
May-2015	Basel II & QPRs Form	Tuesday	30-Jun-2015	30 Calendar Days	Banking Division
Aug-2015	Basel II & QPRs Form	Wednesday	30-Sep-2015	30 Calendar Days	Banking Division
Nov-2015	Basel II & QPRs Form	Wednesday	30-Dec-2015	30 Calendar Days	Banking Division
<b>Banks with Financial Year End - (March, June, September, December)</b>					
Mar-2015	Basel II & QPRs Form	Thursday	30-Apr-2015	30 Calendar Days	Banking Division
Jun-2015	Basel II & QPRs Form	Thursday	30-Jul-2015	30 Calendar Days	Banking Division
Sep-2014	Basel II & QPRs Form	Friday	30-Oct-2015	30 Calendar Days	Banking Division
Dec-2015	Basel II & QPRs Form	Monday	29-Jan-2016	30 Calendar Days	Banking Division
<b>Basel II - Pillar II ICAAP (2014 Year Ends) - 4 Months after Financial Year-End</b>					
Sep-14	Basel II - Pillar II ICAAP	Friday	30-Jan-2015	30 Calendar Days	Banking Division
Oct-14	Basel II - Pillar II ICAAP	Friday	27-Feb-2015	30 Calendar Days	Banking Division
Nov-14	Basel II - Pillar II ICAAP	Tuesday	31-Mar-2015	30 Calendar Days	Banking Division
Dec-14	Basel II - Pillar II ICAAP	Thursday	30-Apr-2015	30 Calendar Days	Banking Division
<b>Basel II - Pillar II ICAAP (2015 Year Ends) - 4 Months after Financial Year-End</b>					
Jan-15	Basel II - Pillar II ICAAP	Friday	29-May-2015	30 Calendar Days	Banking Division
Feb-15	Basel II - Pillar II ICAAP	Tuesday	30-Jun-2015	30 Calendar Days	Banking Division
Mar-15	Basel II - Pillar II ICAAP	Friday	31-Jul-2015	30 Calendar Days	Banking Division
Apr-15	Basel II - Pillar II ICAAP	Monday	31-Aug-2015	30 Calendar Days	Banking Division
May-14	Basel II - Pillar II ICAAP	Wednesday	30-Sep-2015	30 Calendar Days	Banking Division
Jun-15	Basel II - Pillar II ICAAP	Friday	30-Oct-2015	30 Calendar Days	Banking Division
Jul-15	Basel II - Pillar II ICAAP	Monday	30-Nov-2015	30 Calendar Days	Banking Division
Aug-15	Basel II - Pillar II ICAAP	Thursday	31-Dec-2015	30 Calendar Days	Banking Division
Sep-15	Basel II - Pillar II ICAAP	Friday	30-Jan-2016	30 Calendar Days	Banking Division
Oct-15	Basel II - Pillar II ICAAP	Monday	02-Mar-2016	30 Calendar Days	Banking Division
Nov-15	Basel II - Pillar II ICAAP	Thursday	31-Mar-2016	30 Calendar Days	Banking Division
Dec-15	Basel II - Pillar II ICAAP	Friday	29-Apr-2016	30 Calendar Days	Banking Division

### Divisional Contact Details

Divisional Owner	Contact Name(s)	E-Mail	Telephone	Facsimile
Banking Division	Sheena Taylor	<a href="mailto:contactbanking@cimoney.com.ky">contactbanking@cimoney.com.ky</a>	+345 244 1606	+345 945 6132
Policy and Development Division - Statistics Unit	Jackie Powell Marsden Yoshneck Motumba Ronette Johnson-Jum	<a href="mailto:j.powellmarsden@cimoney.com.ky">j.powellmarsden@cimoney.com.ky</a> <a href="mailto:y.motumba@cimoney.com.ky">y.motumba@cimoney.com.ky</a> <a href="mailto:r.johnson-jum@cimoney.com.ky">r.johnson-jum@cimoney.com.ky</a> <a href="mailto:a.anglin@cimoney.com.ky">a.anglin@cimoney.com.ky</a>	+345 244 1655	+345 945 3909
Fiduciary Services Division	Viola Whittaker	<a href="mailto:cmform@cimoney.com.ky">cmform@cimoney.com.ky</a>	+345 244 1552	+345 946-4230
Investments and Securities Division	Heather Clarke	<a href="mailto:contactinvestments@cimoney.com.ky">contactinvestments@cimoney.com.ky</a>	+345 244 1566	+345 949 2532
Insurance Division	Ruwan Jayasekera	<a href="mailto:r.jayasekera@cimoney.com.ky">r.jayasekera@cimoney.com.ky</a> <a href="mailto:insurance@cimoney.com.ky">insurance@cimoney.com.ky</a>	+345 244 1579	+345 946 5611

## **F11- Procedure for the Granting of Extensions for the Filing of Supervisory Reports**

### **Granting an Extension**

The Authority may grant extensions to licensees for the filing of supervisory reports, which include quarterly un-audited forms, reports, schedules, the annually audited financial statements, and the annual report of the Parent/Group where applicable.

### **Deadline for filings**

The quarterly un-audited Forms and Schedules are required by the Authority to be filed within 21 days following the quarter end.

The audited financial statements are required by the Authority to be filed within three months following the financial year- end.

### **Inability to meet deadline**

In the event that a licensee is unable to meet the deadline for filing their reports they may request an extension from the Authority for filing the reports.

### **Considerations for granting an initial extension**

For banking licensees the Authority will grant an extension where there are no supervisory concerns with the licensee. The Authority will grant a two-week extension for the filing of the quarterly un-audited Forms and Schedules, and a one-month extension for the filing of the annually audited financial statements and/or annual report of the group.

For Mutual Funds and Mutual Fund Administrators, the Authority will only grant an extension of one-month to the submission deadline for the filing of the of audited accounts if the fund is up to date with the payment of fees and the submission of the previous year(s) financial statements.

### **Considerations for granting an additional extension**

Further extensions requests for the filing of quarterly un-audited Forms and Schedules must be provided to the Authority in writing with an explanation acceptable for the extensive delay prior to the Authority granting any further extension.

Further extensions requests for the filing of annually audited financial statements/annual report must be provided to the Authority in writing with an acceptable explanation for the delay, along with confirmation that a draft copy of the financial statements will be submitted to the Authority as soon as possible.

### **Log the Extension in MARS**

Once an extension has been granted to a licensee for filing either its quarterly un-audited Forms/Schedules or its annually audited financial statements the extension period must be logged MARSSystem. This prevents an overdue notice being generated during the extension period.

**Issue the approval letter and place a copy of the correspondence on the licensee's file**

For Mutual Funds the initial letter must state that further extension will require a letter from the fund's auditors explaining the reason(s) for the delay.

## **F12 - Procedures on Outstanding Statutory Returns**

The following steps should be taken in order to identify those licensees that have outstanding statutory returns and have not requested an extension for a late filing.

### **Generate the Reports of Outstanding Returns/Audited Accounts**

#### **Review of the List of Licensees with Outstanding Returns**

#### **Prepare and Send out Reminder Letters**

Place a copy of the letter on the licensee's correspondence file.

#### **Subsequent Reminder Letters**

The Head or the Deputy Head of Division must sign all subsequent reminder letters.

## **F13 - Change in Financial Year-End**

The following procedure should be followed when a licensee wishes to change their financial year-end:

### **Check that the required documentation has been supplied to the Authority**

A licensee should outline in a letter the reasons for changing their current financial year-end. The letter should further state the new financial year-end.

### **Confirmation from the Auditor**

The auditor must confirm that they are aware of the new financial year-end.

### **For Mutual Fund Administrators - Confirmation from the directors/shareholders**

A copy of the directors/shareholders resolution must be submitted.

### **Issue confirmation letter**

When the required documentation and confirmation from the auditor and/or directors/shareholders resolution received, prepare a confirmation letter.

### **Mail the confirmation letter to the Licensee and place a copy of the correspondence in the licensee's file**

### **Update MARS**

### **Division specifics**

Where a Mutual Fund Administrator proposes to extend their audit period beyond 12 months, a request for such extension must be submitted to the Authority for approval.

## **F 14 - The Approval of Names with Restricted Words**

### **1. Statement of Objectives**

To set out the policies and procedures that the Authority will follow for assessing applications for approval to use restricted words or derivatives of restricted words in names.

### **2. Introduction**

- 2.1 The Authority is of the view that free use of the restricted words can obviously create opportunities for fraudsters to deceive the public into placing money with fake institutions. International standard setting bodies such as the Basle Committee on Banking Supervision share this view. The Core Principles for Effective Banking Supervision issued by the Basle Committee on Banking Supervision states that the use of the word “bank” in names should be controlled as far as possible.
- 2.2 The various regulatory laws either prohibit the use of certain words in the titles of unlicensed or unregulated entities that connote the type of regulated business or make it an offence to use restricted words in names without the Authority’s approval.

### **3. Legislative Framework**

Section 11 of the Banks and Trusts Companies Law (2013 Revision) (“BTCL”) makes it an offence for an entity to have a name that includes certain words or derivatives that suggest that it carries on business of a type for which it is not licensed, unless approval is granted. These words are; Bank; Trust; Trust company; Trust corporation; Savings; and Savings and Loan. A Person contravening this section of the BTCL is guilty of an offence and liable on summary conviction to a fine or imprisonment.

Section 36 of the Insurance Law (2010 Revision) makes it an offence for an entity to have a name that includes certain words or derivatives that suggest that it carries on business of a type for which it is not licensed, unless approval is granted: Insurance; Assurance; Indemnity; Guarantee; Underwriting; Reinsurance; Surety and Casualty.

The Mutual Funds Law (2015 Revision), in sections 6,7,18 and 19, states that it is an offence for anyone to misrepresent themselves as a mutual fund or a mutual fund administrator and the name of an entity is one way that this may occur.

The Companies Management Law (2003 Revision), section 11 states that only those entities licensed as company managers may use words in their titles that connote the business of company management.

Section 9 of the Securities Investment Business Law (2015 Revision) imposes a general requirement that the licensee’s name must not mislead investors or constitute a misrepresentation.

#### **4. Criteria**

Applicants must provide sufficient information to enable the Authority to make a determination that use of the restricted words will not be deceptive or otherwise detrimental to public interest.

#### **5. Applications**

##### **Required Documentation**

The Authority will consider granting approval to applicants to use names that include words or derivatives of words requiring approval under the regulatory laws provided the following information is provided:

- Local address and contact information for the applicant and, if different, name and contact information of the person to be contacted if additional information is needed to consider the application;
- Principal business address and contact information for the applicant;
- Details of the nature of the Applicant's business; and
- Details of the manner in which the applicant intends to use the restricted word(s) in association with the applicant's business.

##### **Assessment**

The Authority will not approve an application unless it is satisfied that use of the restricted words would not be deceptive or otherwise detrimental to public interest. To ensure that a business does not misleadingly represent itself to the public or any client; the Authority may require applicants to meet certain requirements.

##### **Conditions**

Businesses granted approval by the Authority to use the restricted word(s) must not represent itself, through advertising or other means, as the type of institution or being authorised to engage in the type of business activity implied by the restricted word.

##### **Examples of reasonable requests by licensees or registrants**

The applicant is licensed to carry out other financial business and wishes to use one name, or a derivative of its name, for all of its business activities for corporate branding reasons. In this case the prohibited word may be allowed where it is the proper name of the entity and the proposed name clearly states the activity of the entity. E.g. XYZbank Fund, or XYZtrust Insurance Services etc.

The applicant wishes to qualify the nature of its business by reference to a word or derivative requiring approval. In this case the word or derivative requiring approval is used as an adjective to qualify the nature of the business;

e.g. XYZ Banking Fund for a Mutual Fund that invests in banks, or the XYZ Insurance Agents Loan Company for a lending institution for Insurance Agents, or XYZ Bank Captive plc for a captive that insures the risks of a banking group called XYZ Bank.

A common feature of all these examples is that the final word in the name reveals the business for which it is licensed, the preceding words being merely descriptive.



## **Examples of reasonable requests by Non-licensees**

### Non-financial context/meaning

Non-licensees will normally be allowed to use restricted words in names where the word is used in a non-financial context. For example 'bank' may be used to mean a store of information rather than a financial institution that accepts deposits and makes loans etc. Other examples to illustrate are 'Trust and loved babysitting agency', 'Guaranteed Removals' and 'Casualty Hospital Services'. There are however, some words that have a high potential to mislead. Some examples of names that would not be favourably considered are "ebank" and "cyberbank" as they are closely associated with internet banking.

### Non-profit entities

Charitable or benevolent organisations may often wish to use the word 'fund' or its derivative in their name. Names of entities that are non-commercial or non-profit making concerns may be allowed to include such words or derivatives, where the nature of the entity is clear in the name. Examples include 'Care of Children Fund' or the 'Fund for famine relief'.

## **Procedures**

The Authority will review the application package to ensure that all required documentation has been submitted.

To the extent that further information is necessary, the Authority will contact the applicant to obtain this information.

The Authority will assess the merits of the application with respect to the criteria.

To the extent that it may be necessary to apply conditions, the Authority will advise the applicant.

The Authority will consider the application and issue its decision by following the procedures for "Preparation of Papers for Approval" as set out in the Regulatory Handbook.

Following Management Committee's consideration, the Authority will communicate the decision, and where appropriate the reasons, to the applicant.

## **ANTI-MONEY LAUNDERING PROCEDURES**

### **G1 - Basic Objectives of a Training Programme**

The basic objectives of a training programme for all licensees' staff is:

- To ensure compliance by both the licensee and its staff with the requirements of current relevant legislation in the Cayman Islands relating to money laundering;
- To ensure that the GN and the licensee's own anti-money laundering policy and procedures are effectively followed;
- To ensure all staff understand what money laundering is;
- To engender awareness in staff as to their personal obligations in addition to the responsibility of the licensee in conforming to and reporting under the law;
- To ensure familiarity and compliance with the internal procedures developed by the licensee to meet the GN; and
- To update knowledge and awareness in line with changing circumstances, amendments in the legal framework, and best market practice.

### **Requirements**

The GN highlight the need for an ongoing training and awareness programme in the area of the prevention of money laundering in organizations undertaking relevant financial business. Staff must be aware of their personal obligations under the law, which include the requirements to report to and co-operate with law enforcement agencies.

There is a clear requirement for licensees to introduce comprehensive measures to ensure that staff become and remain fully aware of their responsibilities. Frequency and content of training is left to individual licensees to tailor to their needs and circumstances.

### **New Employees**

New staff should be provided with access to the GN and need to obtain a general appreciation of:

- The nature and process of money laundering and the necessity to combat it;
- The need of a vigilance policy with a particular emphasis on verification;
- The need to report suspicious transactions; and
- The reporting procedures.

### **Staff with Client Contact**

Staff with client contact, at various levels in the licensee, are considered front line in the fight against money laundering. Training programmes should therefore:

- Ensure that formalities for the commencement of the business relationship and the need to know the customer and his/her/its business are understood;
- Include those factors that may give rise to suspicions;
- Emphasise personal legal responsibility;
- Expand on the need to report suspicions including the need to report refused business if suspicions exist;
- Provide awareness of the licensee's reporting systems and procedures; and
- Emphasise the duty not to "tip off" a customer.

### **Senior Staff / Management**

Training programmes should include a higher level of instruction covering:

- The requirements of customer verification and records;
- Record keeping;
- Relevant laws and offences and penalties arising;
- Internal reporting procedures; and
- Procedures relating to service of production, restraint and confiscation orders.

### **Refresher Training**

In order to ensure that staff do not forget their responsibilities it will be necessary for key staff to receive refresher training at regular intervals to ensure that they remain familiar and up to date.

## G2 - Identification Procedures Checklist

During the inspection the examiner will review:

- The written procedures and policies covering client acceptance.
- The criteria for selecting and rejecting prospective clients.
- The criteria used to determine whether a client should set up a company or policy within a company.
- The written identification procedures for all persons and entities conducting business with it. These should include:
  - Full Name/Names used;
  - Correct permanent address including zip code;
  - Date and Place of Birth;
  - Nationality;
  - Occupation;
  - Documentation to support the client's business e.g. turnover in line with expectations given the nature of the business operation;
  - Purpose of the account;
  - Source of funds; and
  - References as required under the relevant regulatory law.
- In the case of non-resident prospective clients, identification documents of the same sort bearing a photograph and pre-signed must be obtained:
  - Current and valid full passport;
  - Armed forces ID card;
  - Employer ID card (public or governmental organization);
  - Full driver's licence;
  - Ensure that the licensee has a good understanding of the client business through:
    - Discussions with the client;
    - Analysis of financial information as necessary;
    - Other enquiries as necessary;
    - Has the licensee met with the client face-to-face? If not, why not?
- The licensee should also take appropriate steps to verify the name and address of applicants by one or more methods. For example:
  - Obtaining a reference from a "respected professional" who knows the applicant;
  - Checking the register of electors;
  - Making a credit reference agency search;
  - Checking a local telephone directory; and
  - Requesting sight of a recent rates or utility bill, care must be taken that the document is an original and not a copy, or conduct a personal visit to the home of the applicant where possible.

### **G3 - Monitoring and Record Keeping Checklist**

During the inspection the examiner will review:

- The record keeping and retention of record policies and procedures of the licensee in respect to relevant information relating to the companies and their accounts;
- Whether there are separate files maintained for correspondence, bank statements and legal documentation; and
- The control procedures surrounding the licensees computerized information systems.
  
- Records relating to verification of identity will generally comprise:
  - A description of the nature of all the evidence received relating to the identity of the verification subject; and
  - The evidence itself or a copy of it or, if that is not readily available, information reasonably sufficient to obtain such a copy.
  
- Records relating to transactions will generally comprise:
  - Details of personal identity, including the names and addresses, of:
    - The customer;
    - The beneficial owner of the account or product; and
    - Any counter-party.
  
- Details of securities and investments transacted including:
  - The nature of such securities/investments;
  - Valuation(s) and price(s);
  - Memoranda of purchase and sale;
  - Source(s) and volume of funds and bearer securities;
  - Destination(s) of funds and bearer securities;
  - Memoranda of instruction(s) and authority(ies);
  - Book entries;
  - Custody of title documentation;
  - The nature of the transaction;
  - The date of the transaction; and
  - The form (e.g. cash, cheque) in which funds are offered and paid out.

## G4 - Suspicious Activity Reporting Procedures

In reviewing the suspicious activity reporting procedures of a licensee, the Authority will ask the following questions.

- Does the licensee have written guidelines on what constitutes a suspicious activity (in many instances it may not be appropriate to rely upon the discretion of lower level employees)?
- Does the licensee have a reporting form in line with Appendix M of the GN? Are staff aware of the content?
- Does the licensee have written guidelines on how to report a suspicious activity (in many instances it may not be appropriate to rely upon the discretion of lower level employees)?
- How does the licensee ensure that staff are aware of the GN?
- Does the licensee produce reports to highlight any accounts, which may be used for the laundering of money and other suspicious activity? These reports would include clients who:
  - Produce large amounts of cash and ask for it to be credited to the intermediary's client money account;
  - Seek to use the intermediary's client money account as a bank account;
  - Settle transactions in cash or bearer instruments, such as travellers cheques;
  - Settle transactions by transfers from banks located in centres known to be associated with drug trafficking;
  - Use companies located in poorly regulated or uncooperative jurisdictions with undisclosed ownership;
  - Transactions are in their size, type or nature not in accordance with their apparent standing or wealth;
  - Source of funds is not clear and the client declines to provide satisfactory explanations;
  - Approach to investment risk or reward is unusual. (They may, for example, be unconcerned about return or risk when a normal investor would be);
  - Behaviour is significantly different from that of the normal investor. (They may, for example, “churn” their investments or indulge in early surrender of life or investment products despite the penalties);
  - Request bearer and other securities transferable by delivery and do not wish to have them held in safe custody or within a recognized custodial system; and
  - Request the intermediary to obtain in his own name for them facilities from banks such as travellers cheques, wire transfers, safe deposit facilities for which the client would normally have to produce satisfactory identification to the bank.
- Does the licensee have policies and procedures to ensure that accounts identified as suspicious are properly followed up?

**G5 - AML Checklist for a Class “A” Insurance Company**

	<b>Identification</b>	<b>Yes/No</b>
1.	Does the insurance entity have written procedures and policies covering client acceptance?	
2.	Does the insurance entity have established criteria for selecting and rejecting prospective clients?	
3.	What criteria are used to determine whether a client should set up a company or policy within a company?	
4.	Has the insurance entity established appropriate written identification procedures for all persons and entities conducting business with it?	
5.	Does the insurance entity have a good understanding of the client business?	
6.	Have appropriate steps been taken to verify the name and address of applicants?	
	<b>Monitoring and Record Keeping</b>	
7.	Has the insurance entity established appropriate record keeping and retention of record policies and procedures in respect to relevant information relating to the companies and their accounts?	
8.	Are separate files maintained for correspondence, bank statements and legal documentation?	
9.	Does the insurance entity have appropriate control procedures surrounding its computerized information systems?	
	<b>Money Laundering Reporting Officer (MLRO)</b>	
10.	Does the insurance entity have a MLRO who is responsible for day-to-day compliance with the company's prevention of money laundering policies?	
11.	Are all suspicious activities reported to the MLRO?	
12.	Is all staff aware of whom the MLRO is? Deputy MLRO?	
13.	Is the MLRO represented on the Compliance Association?	
	<b>Training Procedures</b>	
14.	Does the company maintain detailed records of the training programme?	
15.	Has the insurance entity issued a clear statement of policies in relation to anti-money laundering procedures?	
16.	Has this statement been communicated in writing to all management and relevant staff and is it reviewed on a regular basis?	
17.	Is there a plan for on-going training and refresher courses?	
	<b>Suspicious Activity Reporting Procedures</b>	
18.	Does the insurance entity have written guidelines on what constitutes a suspicious activity (in many instances it may not be appropriate to rely upon the discretion of lower level employees)?	
19.	Does the insurance entity have a reporting form in line with Appendix M of the Anti-Money Laundering guidelines? Are staff aware of the content?	
20.	Does the insurance entity have written guidelines on how to report a suspicious activity (in many instances it may not be appropriate to rely upon the discretion of lower level employees)?	
21.	How does the insurance entity ensure that staff is aware of the guidelines referred to above?	
22.	Does the insurance entity produce reports to highlight any accounts, which may be used for the laundering of money and other suspicious activity?	

## G6 - AML Checklist for a Class “B” Insurance Company

For use during Focused Inspection for review of Insurance Manager’s adherence to The Money Laundering Regulations (2015 Revision) issued under The Proceeds of Crime Law (2014 Revision) and the Guidance Notes on the Prevention and Detection of Money Laundering in the Cayman Islands.

- ❑ Is the board and board committees aware of their responsibilities in connection with compliance and has it established written policies and procedures?
- ❑ Is senior management ensuring that the Company is conforming with the Guidance Notes on the Prevention and Detection of Money Laundering in the Cayman Islands?
- ❑ Does the company adhere to the four basic principles:
  - Know your customer?
  - Comply with anti-money laundering laws?
  - Cooperate with law enforcement authorities and insurance supervisors?
  - Have in place anti-money laundering policies, procedures and a training programme?
- ❑ Does the board have policies and procedures in place to address Know Your Customer (KYC) issues?
- ❑ Are the following areas covered? (Note: only life and annuity companies have to verify identity of policyholders):
  - Appropriate written identification procedures for all persons and entities with whom they conduct business. Key documentation items should include:
    - Full Name/Names used
    - Current permanent address including zip code
    - Date and Place of Birth
    - Nationality
    - Occupation
    - Purpose of the account
    - Estimated level of turnover (financial projections)
    - References as required under the Insurance Law.

In addition, for companies, partnerships and other institutions, documentation would include:

- Certificate of Incorporation
- Name(s) and address(es) of beneficial owners(s) being any person holding 10% interest or more or with principal control over the company’s assets and any person (or persons) on whose instructions the signatories on the account are to act or may act



where such persons are not full time employees, officers or directors of the company;

- Corporate documents i.e. Memorandum and Articles of Association, copies of the list/register of directors
- Copies of Power of Attorney or other authorities given by the entity

In the case of non-resident prospective clients, identification documents of the same sort bearing a photograph and pre-signed must be obtained.

- Current and Valid full passport
- Armed forces ID card
- Employer ID card (public or governmental organization)
- Full drivers licence

In the case of companies writing life and annuity business, the Manager should verify identity, including name and address, of the policyholders.

Background checks and verification of identification information provided, including Police Clearance Certificates.

- Established criteria for selecting and rejecting prospective clients.
  - Clients' acceptance procedures, including review of new business application packages.
  - Procedures for verifying source of funds – for capital contributions and annuitants.
  - Ongoing review of Captives to ensure manager has a good understanding of client business through discussions with the client, analysis of financial information and other enquiries as necessary.
  - Has the Insurance Manager met with the client face-to-face? If not, why not?
  - Is there a file maintained for each applicant for business that shows the steps taken and the evidence obtained?
- Does the board have policies and procedures in place to address due diligence and money laundering, for purpose of identifying and reporting suspicious activities or transactions, including:
- Guidelines on what constitutes a suspicious activity or transaction.
  - A description of the anti-money laundering controls in place.
  - Procedures to follow for identification and reporting of suspicious activities or transactions.
  - Reports produced to highlight any activity/transaction, which appear to be suspicious activities.
  - Written guidelines on how to report a suspicious activity or transaction.
  - Example of reporting forms in line with Appendix L and Appendix M of the GN.
  - Follow-up procedures on actions taken in regard to suspicious activities or transactions identified.

- Providing staff with training from time to time in the recognition and handling of suspicious transactions. Senior management and managers should receive more in-depth and broader training compared to support staff.
  - Does the employee sign a statement noting that they have received the training?
  - Maintaining a register of enquires made to it by the Authority or other law enforcement authorities.
- Does the institution have a MLRO and Deputy and what are his or her responsibilities?
  - Who does the MLRO or Deputy MLRO report to?
  - Are there written policies and procedures, which govern the MLRO's and Deputy MLRO's duties?
  - Is there an alternate MLRO if the appointed MLRO or the Deputy is on leave or away due to illness?
  - Are staff aware of who is the appointed MLRO, Deputy MLRO, and Alternate MLRO?
  - Does the institution have the resources to facilitate ongoing training for due diligence of KYC and Anti-Money Laundering issues?
  - Does the company maintain detailed records of the training programme?

## **G7 - Banking Division Examples of Suspicious Activity**

### **Examples of suspect operations**

The following list of examples has been prepared in order to increase the level of awareness of circumstances which could give rise to suspected money-laundering operations.

The list is by no means exhaustive and in many cases a single operation of the type indicated is not in itself sufficient to arouse suspicion or to motivate investigations. However, any combination of the different cases listed below could imply the existence of unlawful money-laundering activities. Every incident should be analysed on a case-by-case basis.

### **Money laundering through cash transactions:**

- Unusually large deposits of cash by an individual or a legal entity, whose apparent business activities are normally carried out using cheques and other instruments.
- Substantial increase in the cash deposits of any person for no substantial reason, especially if such deposits are subsequently transferred within a short space of time to a destination not normally associated with the customer in question.
- Customers depositing cash on different occasions, in such a way that on each occasion the amount involved is not significant, but all together the total of such deposits equals a very large amount.
- Customers seeking to change large quantities of small denomination notes for larger ones, or who frequently change large amounts of cash in foreign currency.
- Customers whose deposits contain forged notes or fraudulent instruments.
- Customers transferring large amounts of money to or from abroad, with instructions for payment to be made in cash.
- Deposits of large amounts of cash using night safes.
- Frequent cash deposits, over the counter or via the night depositary, or cash withdrawals of large amounts, without any apparent justification in terms of the type and volume of the business in question.

### **Money laundering through bank accounts:**

- Customers not acting on their own behalf and who refuse to reveal the true identity of the beneficiary.
- Customers holding several accounts and making cash deposits in each of them, in such a way that the total amount deposited is considerable.
- Any persons whose accounts show virtually no banking or business activity, but are used to receive or pay important amounts not clearly related to the account holder and/or the business of the latter (e.g. A substantial increase in the volume of an account).
- Reluctance to provide the normal information required on opening an account, giving minimum or false information, or when applying to

open an account, providing information which is difficult or expensive for the bank to verify.

- Customers maintaining accounts with several financial institutions in the same town, especially when the bank is aware of the existence of a regular consolidation process of such accounts prior to a request for a transfer of the funds.
- The balancing of payments with the credits made in cash the same day or the previous day.
- The withdrawal of large amounts from an account previously dormant/inactive, or from an account which has just been credited with a large amount unexpectedly from abroad.
- Company representatives deliberately avoiding contact with the office.
- Substantial increase in cash deposits or deposits of negotiable instruments by a professional firm or company, using the accounts opened in the name of the client of a fiduciary company or account, especially if such deposits are quickly transferred between another client company and the fiduciary account.
- Customers refusing to provide information, which under normal circumstances would permit access to a loan or other valuable banking services.
- Insufficient use of the normal advantages offered by banks, such as deliberately avoiding normal interest rate for important balances.
- Whenever a large number of individuals deposit cash in the same account without an appropriate explanation.
- Accounts showing important movements of funds through the wire transfer systems that are not justified by the characteristics and volume of the customer's business.
- Accounts with practically no movements, but which are used sporadically to receive or send large amounts without any apparent objective or justification in terms of the personality and business of the customer.

**Money laundering through transactions related to investments:**

- The purchase of shares to be kept in custody by the financial institution, such operation seeming inappropriate in view of the customer's business.
- Deposits or back-to-back loan transactions with branches, subsidiaries or affiliates of the bank in areas known for drug trafficking or money-laundering.
- Requests from customers for investments handling services (in foreign currency or in shares) where the source of the funds is not clear or is inconsistent with the type of business as known.
- The purchase of large or unusual shares payable to the bearer.
- The purchase and sale of an instrument without any apparent purpose or in unusual circumstances.

**Money laundering through internationally active banks:**

- A customer introduced by a foreign branch, affiliate or bank based in a country where drug production or trafficking is frequent.
- The use of letters of credit and other methods of trade finance in order to move money between countries in which such business is illogical in view of the customer's normal business.
- Customers making or receiving regular payments in large amounts, including telegraphic operations, which cannot be clearly identified as transactions made in good faith, to or from countries commonly associated with the production, processing and sale of drugs; outlawed terrorist organizations; etc.
- The creation of large balances, which are not consistent with the sales or turnover of the customer's business and subsequent transfers to accounts at other banks outside the jurisdiction.
- Electronic funds transfers, without any explanation, by customers, involving an immediate deposit and withdrawal from the account or without even passing through an account.
- Frequent requests for travellers' cheques, foreign denomination drafts or other negotiable instruments.
- Frequent deposits in an account of travellers' cheques or foreign denomination drafts, especially if originating from abroad.

**Money laundering via loans with or without guarantee:**

- Customers unexpectedly paying off problem loans.
- A request for a loan backed by assets deposited in the financial entity or by third parties, the source of which is unknown or the value of which has no relation to the situation of the customer.
- A request from a customer for financing, when the source of the financial contribution of the customer with respect to a business is unclear, particularly if it refers to real estate.
- Loans without a clear purpose.
- Loans paid off from unknown sources or which are inconsistent with what is known about the customer.
- Loans guaranteed by third parties with apparently no relation to the customer.
- Loans guaranteed by property, in which the disbursement will be made in another jurisdiction.
- Requests for credit facilities from little-known customers who offer guarantees in cash, financial assets, foreign currency deposits or foreign bank guarantees and whose business bears no relation to the object of the operation.
- When a guarantee for the reimbursement of credit operations is left to be enforced the amount of same having been used for legal trading activities, or transferred to another company, person or entity, without any apparent justification.

## **G8 - Suspicious Activity Reporting Procedure**

The Head of Compliance (the “HOC”) and the Deputy Head of Compliance (the “DHOC”) are the Money Laundering Reporting Officer (the “MLRO”) and Deputy MLRO respectively, for the Cayman Islands Monetary Authority (the “Authority”).

The MLRO is responsible for making disclosures under the Money Laundering Regulations (2015 Revision) on behalf of the Authority.

The procedure for the reporting of suspicious activity is as follows:

1. If any member of the staff or management of the Authority obtains information and is of the opinion that the information indicates that any person has or may have been engaged in money laundering, they shall, as soon as is reasonably practicable, make a written report to the MLRO. This report shall be made by email and copied to the Managing Director, the Legal Counsel, and the relevant Head of Division. This must be followed up with a signed hard copy.
2. In the event that the MLRO forms an opinion based on a report made as noted in 1 above or otherwise, the MLRO shall, as soon as is reasonably practicable, disclose the information to the Reporting Authority, pursuant to regulation 16(1) of the Money Laundering Regulations (2015 Revision).
3. In the absence of the HOC, the DHOC shall assume the duties of the MLRO. If the HOC and the DHOC are absent, the relevant Head of Division shall make the disclosure to the Reporting Authority.

I, the undersigned, have read and understood the suspicious activity reporting procedures as detailed above.

Name (in capitals): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## G9 - Report Form for Suspicion of Money Laundering



This form is for the Monetary Authority staff to report any suspicious activity regarding money laundering uncovered during the course of both on-site inspections and off-site monitoring. All reports must be sent directly to the to the Monetary Authority's Money Laundering Reporting Officer, the Head of Compliance, and copied to the Managing Director, the Legal Counsel, and the relevant Head of Division.

### REPORT FORM FOR SUSPICION OF MONEY LAUNDERING

Name of Institution: \_\_\_\_\_

Institutions' Licence Number: \_\_\_\_\_

Name of person/entity about whom the report is being made:

\_\_\_\_\_

If the report concerns a natural person, please record the following:

Date of birth:        /        /        (dd/mm/yyyy)

Sex (*please check*):        Male         Female

Last known residence:

\_\_\_\_\_

City: \_\_\_\_\_

Country: \_\_\_\_\_

If the report concerns an entity which is not a natural person, please note the country of incorporation:

\_\_\_\_\_

Origin of report (*please check*): On-site inspection

Off-site monitoring

Name of reporting staff: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

**NATURE OF THE SUSPICION**

Use the space below to summarise the nature of the suspicion and the basis for your suspicion.

Examples of sources of suspicion include: inspection of client files, contact/discussion with employees/management, evidence of manipulation of books and/or records by the institution. *(Continue on a separate page if necessary).*

**Any other relevant information**

Name of reporting staff: \_\_\_\_\_

Signature of reporting staff: \_\_\_\_\_

Date of report: \_\_\_\_\_



## **G10 - Schedule 3 Criteria for Recommending to Cabinet additions to Third Schedule of the Money Laundering Regulations (2015 Revision)**

### **1. Objectives**

The objective of the criteria set out below is to establish the basis on which countries or territories with equivalent legislation are to be added to the list in the Third Schedule of the Money Laundering Regulations (2015 Revision). The criterion is set to ensure that a consistent approach is taken to recommendations made by the Monetary Authority to Cabinet on making additions to the list. In this context the criteria seeks to establish not only whether a Country or Territory has equivalent legislation but also to set out the condition under which a Country or Territory, should be added. By publishing these criteria or standards the Authority seek to assist Financial Service Providers to understand the basis for the list and in that establish greater transparency to the process.

### **2. Background**

The Money Laundering Regulations (2015 Revision) (“the MLRs”) in the Third Schedule (“Schedule 3”) provide a list of Countries and Territories with equivalent legislation. The MLR’s reference the Schedule 3 list in Regulation 8 (1), 9(5)(b) and 10 (1) (b) (ii). The significance of a Schedule 3 Listing is that the identification procedures and requirements under the MLRs will be satisfied where;

1. Funds of the applicant are transferred from a bank that is regulated in and is either based, incorporated in or formed under the laws of a Schedule 3 Country or Territory (Regulation 8(1)).
2. The applicant is acting as agent for a principal and has given a written assurance that the evidence of identification of the principal has been obtained and recorded and the applicant is regulated by a regulatory authority on the Schedule 3 Country or Territory. (Regulation of 9 (4) and (5))
3. The applicant for business is himself acting in the course of a business regulated by an overseas regulatory authority and is based, incorporated in or formed under the law of a Schedule 3 Country or Territory (Regulation 10(1) (b)). This exemption does not apply where there is knowledge or suspicion of money

The Guidance Notes on the Prevention and Detection of Money Laundering in the Cayman Islands also includes several references to Schedule 3. The Schedule 3 list of countries and territories first appeared in the Money Laundering Regulations when first passed in 2000. The original countries were taken from the UK list and were all FATF members. Since then the UK has adopted a more subjective approach whereby Financial Services Providers are able to assess countries equivalency based on intelligence provided. The approach in Cayman is rather different and a definitive list is preferred. Hence there was a need to understand and to stipulate the rationale for including countries on the list. To mitigate risk of incorrect or biased assessments and to reduce resource implications, an essential element of the criteria below is to draw upon information made available by international and regional bodies such as the FATF and CFATF.

### **3. Stage 1 objective criteria to be taken into account**

The Authority does not intend to consider additions to the Third Schedule of the Money Laundering Regulations (2015 Revision), that is, make efforts to assess countries for equivalent anti-money laundering legislation and regulations, unless one of the following criteria have been met.

#### **3.1. Financial Sector prerequisite**

Representations made by one or more Financial Services Provider that a significant amount of business is done with participants in a particular country whose exclusion from Schedule 3 would result in significant cost implications in ensuring compliance with customer identification and verification requirements by Financial Service Providers present on the Island.

#### **3.2. Formal Request by a Country or Territory**

A formal request by the Government of a country with which there is a significant amount of business or the potential for such, which would be significantly disadvantaged by that country's exclusion from Schedule 3.

### **4. Stage 2 objective criteria to be taken into account**

#### **4.1. Assessment of Anti-Money Laundering Legislation**

Knowledge of and experience with the legislative framework of the country or territory will be a key measure of whether a country or territory has equivalency. Wherever possible requests for additions to the Schedule 3 should be accompanied by the laws and regulation pertaining to anti-money laundering. This will include laws and regulations on the criminalization of Money Laundering, Enforcement, Preventative measures (e.g. Financial Sector regulation) and International Cooperation. The Monetary Authority will if necessary procure these laws but this will impact on the length and efficiency of the process. One method, and the most cost-effective, to acquire knowledge of the legislative framework of the country or territory is to rely on responsible third party reports where the country has undergone an assessment by an international or regional standard setter or other international body using criteria established by such a standard setter e.g. FAFT, IMF, CFATF.

#### **4.2. Assessment of effectiveness of Anti-Money Laundering Regime**

To ensure that it is appropriate to recommend that a country or territory be placed on the list it will also be necessary to have an assessment that provides evidence that the country has an effective anti-money laundering regime. Assessments can provide invaluable information regarding a country's legal and regulatory regime and also details on relevant issues such as Know Your Customer processes. Also beneficial are indications on how a country will deal with any weaknesses that may have arisen during that assessment. In effect, review of such an assessment gives the Authority reputable facts about a country and allows for an informed decision to be made.

One method, and the most cost-effective, is to rely on responsible third party reports where the country has undergone an assessment by an international or regional standard setter or other international body using criteria established by

such a standard setter e.g. FAFT, IMF, etc. Indications of successful implementation are:

- Established and effective Suspicious Transaction Reporting system
- Established and effective Financial Intelligence unit or equivalent
- Effective and comprehensive financial regulatory system
- Established and effective International co-operation

#### **4.3. Other relevant factors**

The final criterion is more general in that it can contain various factors that attribute to qualification for equivalency. Factors that can be considered in this section can include but is not limited to: membership in international/regional bodies or associations, and knowledge of legal system with respect to matters such as corruption. Until 2002, FATF membership, or the removal from the NCCT list, was the primary criteria for inclusion on Schedule 3. Whilst membership in itself, at least in the early days of the FATF, would not guarantee equivalency, at this point in time the majority of members have faced some form of assessment and therefore membership has contributed to the improvement of those jurisdictions. Furthermore, reliance should be placed upon those jurisdictions that are members of the CFATF or the OGBS and the outcome of mutual evaluations. However, a number of countries may not be members of these bodies and yet having been assessed are seen to be in observance with the anti-money laundering recommendations.

Another consideration, membership of the Egmont Group could demonstrate equivalency in one particular aspect of anti-money laundering systems; reporting of suspicious activity.

Attention should be paid to the quality of the membership, and any adverse reports against the member by the organisation itself. This would be in relation to the FATF 40 revised recommendations.

## **G11 – Memorandum to Board - Addition to Schedule 3**

### **MEMORANDUM**

**To:** Board of Directors

**Through:** Managing Director

**From:** Policy and Development Division

**Date:**

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**Subject: Proposed addition of XXXX to the Third Schedule list of countries in the Money Laundering Regulations**

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#### **Issue**

#### **Background to the Third Schedule list**

#### **Criteria for Addition to the Third Schedule**

#### **Stage 1**

#### **Financial Sector prerequisite**

#### **Formal Request by a Country or Territory**

#### **Stage 2**

#### **Assessment of Anti-Money Laundering Legislation**

#### **Assessment of effectiveness of Anti-Money Laundering Regime**

#### **Other relevant factors**

#### **Recommendation**