

Cayman Islands Monetary Authority

SUMMARY OF PRIVATE SECTOR CONSULTATION AND FEEDBACK STATEMENT



STATEMENT OF GUIDANCE: NATURE, ACCESSIBILITY AND RETENTION OF RECORDS

Section	Industry comment	Authority's response	Consequent amendments to the draft SOG
General Observations			
	<p>The original SOG was empowered by the SOG on (a) Internal Controls Banks; (b) Internal Controls Insurance, (c) Internal Controls Securities Investment Business; (d) Internal Controls for Trust Companies, Company Managers and Corporate Services Providers; and (e) Internal Audit Banks; which were all empowered by paragraph 2.2 of the Rule on Internal Controls – General for all Licensees.</p>	<p>SOGs are empowered by the contents of the regulatory laws as stated in section 34(3) of the MAL.</p> <p>The Authority expects that directors keep records relevant to performing their functions and to meeting their obligations under the DRLL. Section 24(1)(e) of the DRLL supports the SOG being expanded to directors wherein the Authority may examine the affairs or business of any registered, professional, or corporate</p>	<p>None</p>

	<p>It does not therefore seem possible that the revised SOG can be expanded to encompass the DRLL without first amending the empowering Rule and issuing a new SOG specifically for the internal control of Directorship services – both of which would be difficult given that Director services are fiduciary in nature unlike the other in scope entities whose activities are operational in nature.</p> <p>Further, the substantive conduct of a Director is documented within the minutes of the entity, and retained at the registered office of that entity. Imposing a record retention requirement on a Director without adjusting the guidance to account for the unique nature of the Directorship services would result in unnecessary redundancies.</p>	<p>director. In addition, section 24(2) encompasses the Authority's right to access records.</p>	
	<p>As a general comment, the SoG does not distinguish between the different regulated entities and different provisions will have relevance to different</p>	<p>The Authority does not propose at this time to issue specific record keeping provisions for the various types of relevant entities. The intent of the</p>	<p>None</p>

	<p>categories of licensee. It would be a major improvement if the SOG were to be divided into general provisions applicable to all licensees and specific provisions relevant to certain types of licensee. It seems that many of the provisions are relevant to banks but in the present draft would apply to Companies Management Licences, Trust Licences and Administration Licences.</p>	<p>SOG is to set out the minimum expectations for record keeping that are broadly applicable across sectors which relevant entities should implement accordingly.</p>	
<p>3. Scope of Application</p>			
<p>3.2 The Authority acknowledges that relevant entities that are part of a group may be subject to group-wide record keeping practices. However, the Authority considers it important for each entity in a group structure that is a separate legal entity to adopt record keeping practices that meet the objectives of this Statement of Guidance and that are appropriate for the particular operations of that legal entity. The relevant entity must assess whether this can be achieved by adopting the group-wide standard. Additionally, when records are kept by another member of the group, they must be accessible to the Authority.</p>	<p>We assume that the use of the words "_the Authority considers it important for each entity in a group structure that is a separate legal entity to adopt" was deliberate and that consequently the SOG on Records shall apply to Cayman companies that are not branches (i.e. the same legal entity within a group structure). We note also that Cayman companies (e.g. subsidiaries) can also use group standards if they achieve the same objectives as set out under</p>	<p>This paragraph is intended to show that subsidiaries can also use group standards. Upon reading the rest of the SOG, it captures record keeping requirements in such a way that subsidiaries can indeed use group standards as long as the SOG is not impacted.</p>	<p>None.</p>

	the SOG on Records.		
4. General			
4.1 A "record" has the same meaning as "document" as defined in the MAL and "electronic record" has the same meaning as defined in the Electronic Transactions Law (as amended). Original records include electronic copies of paper-based records which are legible and easily accessible.	Definition of 'Original records' should be expanded to reflect the reality that with the use of electronic signing some documents would never originate in paper-based form.	Noted. To be thorough, 4.1 will be amended to read: "...Original records include records originating electronically or electronic copies of paper-based records. All records must be legible and easily accessible."	Amended
	We assume that this is meant to cover electronic copies, where the original paper-based record may no longer exist; i.e. an electronic copy has been stored and is the only remaining record.		
4.2 Accessible records are records that can be provided by the relevant entity to the Authority within a reasonably short timeframe. The Authority expects that most records should be provided within a 24-72 hour period from the time they are requested by the Authority whether stored within the Cayman Islands or in another jurisdiction, or within any other timeframe.	We would suggest that the timeframe be measured in business days rather than hours such that it state "within a 2-3 business day period"	Noted. For clarity, this sentence in 4.2 will be amended to read: "... The Authority expects that most records should be provided within 1-3 business days from the time they are requested by the Authority..."	Amended

	... for the avoidance of doubt, the paragraph should be expanded to allow for time extensions under reasonable circumstances...	Noted. For clarity this will be amended to read: "...or within the timeframe as determined from time to time by the Authority."	Amended
4.4 Relevant entities should ensure that their records, including accounting records, are maintained using an appropriate record management system and in a manner that allows the Authority to access records. Records may be kept in a form other than a paper-based document or copy of a document, as long as the integrity of the document remains intact.	The SOG states that record should be kept "in a manner that allows the Authority to access records". Does this mean CIMA wants to be able to access records directly or does CIMA want to obtain a copy of records? If it is not meant to be that CIMA wants to be able to access records directly perhaps the wording could be clarified to "in a manner that allows the Authority to obtain records upon request.	The regulatory laws grant the Authority, in the performance of its functions, the statutory power to have access to records, books, documents, etc. at all reasonable times. Where there is no clear mandate in a regulatory law to access records, the Authority may examine, in any manner the Authority determines, the affairs or business of the entity which in essence includes the entity's records. "Access" of records is consistent with the language used in most regulatory laws and in the regulatory measures. The SOG will continue to adhere to the same language.	None
4.5 A relevant entity should establish a records management system that addresses but is not limited to the categorization of records, records retention periods for various categories of records, and disposal of	The SOG states that "The records management system should comprise of a comprehensive record retention policy....". Does this mean that each class	The Insurance Law (2010) stipulates that part of the function of the insurance manager consists of maintenance of books and records for client insurers.	None

<p>records. The records management system should comprise of a comprehensive record retention policy that is in line with regulatory laws and other legal requirements in the Cayman Islands.</p>	<p>B, C and D insurance entity needs a "comprehensive" record retention policy or if there is an insurance manager, can the class B, C or D insurance entity reference the record retention policy of insurance manager? Is this the intention of section 4.8?</p>	<p>Therefore the Authority expects that a records management system which facilitates effective and efficient management of the client insurers' business be in place. Insurance companies that are required to have a place of business in the Islands are also required to maintain books and records considered appropriate by the Authority and as such should have a record retention policy as part of their records management system.</p>	
<p>4.6 Records should be maintained on a continual basis so that they are up-to-date at all times as far as is reasonably practical. There should be no unjustifiably excessive delays to records maintenance.</p>	<p>This sits contrary to section 4.8 in the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands.</p> <p>4.8 "The customer due diligence...do not imply that financial services providers have to repeatedly identify and verify the identity of each customer every time that customer conducts a transaction, or when a document evidencing identification expires. An institution is entitled to rely</p>	<p>This paragraph has mostly remained as in the original SOG Nature, Accessibility and Retention of Records. The intention is to ensure the integrity of records which facilitates the reliability of such records. Section 4 of the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands is consistent with this wherein customer identity documents need not be automatically renewed unless the customer information</p>	<p>Amended</p>

	<p>on the identification and verification steps that has already undertaken unless it has doubts about the veracity of that information.”</p> <p>This has been an issue for industry as when CIMA does an inspection it expects that licensees have updated verification documents which is not what the Guidance Notes states – some clarity on this point would be useful as the new guidance on Record Retention is creating even more confusion.</p>	<p>cannot be verified by other means (s4.2) or the financial services provider has doubts about previously obtained identification data (s4.7 and s4.8). The Authority understands that records are considered up-to-date in certain circumstances and will take that into account.</p> <p>For clarity, this section will be amended to read:</p> <p>“Records should be maintained so that they are up-to-date at all times as far as is reasonably practical. There should be no unjustifiably excessive delays to records maintenance.”</p>	
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5. Records Retention Timeframe

<p>5.1 Relevant entities should maintain records in their original format for a minimum period of five years after the transaction date or any other period as stipulated in regulatory or other laws.</p>	<p>The reference to maintaining records in their “original format for a minimum period of five years after the transaction date” would seem to imply that, where such records are paper-based, they should be kept in addition to the electronic versions. Would appear to be contradictory to other sections of the SOG.</p>	<p>Section 4.1 of the SOG states that “original records include electronic copies of paper-based records which are legible and easily accessible.” Therefore, the reference to “original format” in section 5.1 is intended to include electronic copies of paper-based records. For clarity, 5.1 will be amended to read:</p>	<p>Amended</p>
	<p>The requirement to keep the record in its “original format” (e.g. hard copy) rebuts the ability of a Cayman entity to maintain records in electronic format under the Electronic Transactions Law (2003 Revision). We would suggest removing the words “in their original format”.</p>	<p>“Relevant entities should maintain records in their original format for a minimum period of five years after the transaction date or any other period as stipulated in regulatory or other laws. Original format includes electronic copies of paper-based records as</p>	

	<p>The SOG states that relevant entities should maintain records in their "original" format for a minimum period of five years after the transaction or any other period as stipulated in regulatory or other laws. We are not aware of any regulatory or other laws that require the "original" format to be maintained for insurance companies. In fact the Electronic Transactions Law section 9(1)(a) states "where a statutory provision, rule of law, contract or deed requires conclusive evidence of the original form of a document, record or information to be presented or retained, that requirement shall be met by the presentation or retention of an electronic record if the document, record or information is accurately represented therein". Our concern would be that section 5.1 of this SOG would be interpreted as a "statutory provision", and therefore we would now be required to maintain originals for a period of five years vs</p>	<p>stipulated in section 4.1"</p>	
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	<p>scanned documents which is not conducive to a paperless office. A good example in the insurance industry is an insurance policy. Even if the insurance policy is issued with an electronic signature, the "original" format of the policy would be the one that has the stamp duty applied, so we would need to maintain all insurance policies in "original format" for a period of five years.</p>		
	<p>We believe that there are inconsistencies amongst the rules: for example, does "original format" in provision 5.1 mean that if a licensee were to receive a paper document such as a signed fund administration agreement which is then scanned and stored electronically, that the licensee needs to keep the original paper document ("original format") for 5 years after the fund has closed? And if so, how does one reconcile with provision 9.2? Would this mean that only after 5 years that a licensee can rely on an electronic copy? However, after 5 years it</p>		

	<p>may not be obligated to keep a copy at all.</p>		
<p>6. Elements of Records Management</p>			
<p>6.2 Records should be retained in the English language or be professionally translated into written English without delay at the request of the Authority. Where records are translated, the original language version should be retained by the relevant entity.</p>	<p>We assume that this means that a regulated entity may primarily retain certain records in a foreign language (e.g. Portuguese for a Brazilian bank), as long as it agrees to translating such documents into English if the Authority requires it to do so.</p>	<p>Unless the Authority has specified otherwise for a particular type of relevant entity, it is understood that a relevant entity may likely keep some records in the language used by the entity and spoken by its employees. However it is expected that where requested by the Authority, such records be professionally translated quickly and accurately.</p>	<p>None</p>

7. Keeping of Accounting Records

<p>7.2 A relevant entity must keep proper accounting records in such a manner that they are sufficient to show and explain the relevant entity's transactions and commitments (whether effected on its own behalf or on behalf of others including clients) and in particular so that these records: (...) b) demonstrate whether or not the relevant entity is or was at that time complying with its financial resources requirement (e.g. capital requirements)</p>	<p>We note that financial resources requirement only apply to certain regulated entities. This should be reflected.</p>	<p>Noted. For clarity this will be amended to read: “demonstrate whether or not the relevant entity is or was at that time complying with its financial resources requirement, where applicable (e.g. capital requirements)...”</p>	<p>Amended</p>
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<p>7.3 A relevant entity should ensure that its accounting records shall as a minimum contain:</p> <p>a) a record of all assets and liabilities of the relevant entity including any commitments or contingent liabilities;</p> <p>b) a record of all income and expenditure of the relevant entity explaining its nature;</p> <p>c) a record of all investments or documents of title in the possession or control of the relevant entity showing the physical location, the beneficial owner, the purpose for which they are held and whether they are subject to any charge;</p> <p>d) entries from day to day of all sums of money received and expended by the relevant entity, whether on its behalf or on behalf of others (including clients), and the matters in respect of which the receipt and expenditure takes place;</p> <p>e) entries from day to day of all purchases and sales of investments by the relevant entity, distinguishing those which are made by the relevant entity on its own account and those</p>	<p>This section is overly detailed (e.g., it requires records to be maintained in respect of all income and expenditure and has no materiality threshold), making it an onerous burden to certain businesses without any clear regulatory benefit.</p>	<p>Section 7.3 remains as is in the original SOG Nature, Accessibility and Retention of Records. The Authority expects that many relevant entities are already familiar with this section and will continue to meet it.</p>	<p>None</p>
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<p>which are made by or on behalf of others (including clients); and</p> <p>f) entries from day to day of the receipt and dispatch of documents of title, which are in the possession or control of the relevant entity.</p>	<p>With regards to (e), for the insurance industry most entities hire an investment manager and investment custodian to provide investment services, therefore that entity maintains the day to day accounting for all purchase and sales, and will provide a monthly report of activity. Will retaining a copy of that report suffice for adherence to this requirement? Would it be reasonable to clarify section (e) for outsourcing of this function by adding/amending this section to be "entries from day to day of all purchases and sales of investments by the relevant entity, distinguishing those which are made by the relevant entity on its own account, [Insert: those which are made by the relevant entity by an outsourced investment manager] and those which are made by or on behalf of others (including clients)".</p>	<p>While the insurance manager may appoint other parties, the ultimate responsibility for the outsourced function remains with the insurance manager. This therefore means that it is the responsibility of the insurance manager, inter alia, to safeguard the assets of the client insurer and to maintain complete books and records for the client insurer (as per the SOG – Responsibilities of Insurance Managers). In general, the insurance manager must be knowledgeable about its clients business and regular reports from the investment manager should be sufficient to show investment decisions made on a daily basis. A monthly report will be considered sufficient for the insurance industry unless otherwise stated by the Authority.</p> <p>Paragraph (e) sufficiently captures the purchases and sales of investments by any party including the investment manager.</p>	<p>None</p>
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	<p>With regards to (c), the reference to “beneficial owner”, unclear if requirement applies to “relevant entities” such as the service provider or if also applicable to clients, per the consultation document this is linked to the UBO register platform recently consulted upon. Because of the reference to the Monetary Authority Law (2016 Revision) in section 1.1 is our understanding correct that all license holders and financial services business conducting relevant financial business are captured?</p>	<p>This paragraph has remained the same as in the original SOG Nature, Accessibility and Retention of Records and pertains to “relevant entities” (where applicable) as listed in section 3.1 of the amended SOG. The paragraph requires that a relevant entity keeps a record of the beneficial owner of any investment the relevant entity holds or controls. There is no intention to connect this paragraph to the requirements of the beneficial ownership registry.</p>	<p>None</p>

8. Maintenance of Records Outside of the Cayman Islands

<p>8.1 Some Regulatory Laws allow relevant entities to hold their records outside of the Cayman Islands. In addition, the Authority has the power to grant exemptions to relevant entities to permit the maintenance of records outside the Cayman Islands.</p>	<p>We are unaware of (a) a Regulatory Law that discusses the retention of records outside of the Cayman Islands and (b) any Cayman law that prohibits or precludes the retention of records outside of the Cayman Islands (aside from the requirements of a private bank under the Banks and Trust Companies Law and the requirements under the Companies Law to maintain certain corporate, and soon to be beneficial ownership, records in the Cayman Islands). Accordingly, we are unsure of why the Authority would have a "power" to grant an exemption. This implies that, where such Laws do not expressly permit such retention outside of the Cayman Islands, the regulated entity would need to seek such an exemption. We do not believe that there is a statutory or regulatory basis for this. Accordingly, we would suggest the removal of Section 8.1.</p>	<p>This paragraph has remained the same as in the original SOG Nature, Accessibility and Retention of Records. The Authority acknowledges that currently, there is only one regulatory law, the BTCL that sets out requirements for certain holders of a "B" licences to retain records on island. The intention of the paragraph was also to highlight that some relevant entities can seek approval for the location of certain records overseas as mentioned in some SOGs such as the SOG Licensing Company Managers.</p> <p>For clarity, this paragraph will be amended to read:</p> <p>"Relevant entities, in most instances, are not restricted from holding certain records outside of the Cayman Islands. In addition, the Authority may give approval, where appropriate, to relevant entities to permit the maintenance of records outside the Cayman</p>	<p>Amended</p>
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		Islands.”	
8.5 Where records are maintained outside the Cayman Islands by the head office or parent company through outsourcing, storage, or other arrangements, the relevant entity remains ultimately responsible for record keeping requirements and accessibility to records by the Authority.	We would suggest amendment of Section 8.5 to read "Where records are maintained outside the Cayman Islands by the head office, branch, parent company, affiliate, or another service provider, through outsourcing..."	Noted. For clarity, this paragraph will be amended to read: "Where records are maintained outside the Cayman Islands through outsourcing, storage, or other arrangements, the relevant entity remains ultimately responsible for record keeping requirements and accessibility to records by the Authority."	Amended

9. Electronic Records

9.3 The Authority expects that a relevant entity takes care to retain paper-based records and not to immediately destroy all paper-based records that have been converted to electronic records. Prudent consideration to the legal, regulatory, and organizational requirements and recommendations on the retention of originals should be a determining factor.

The SOG acknowledges and accepts that there are benefits to storing records in electronic rather than paper-based format, but then imputes a responsibility on the licensee to keep the paper-based records, which is incoherent, inefficient and costly.

The intention of this paragraph is to advise relevant entities that caution should be taken to prevent premature destruction of paper-based records. A relevant entity should be satisfied that, inter alia, it has sufficiently met record keeping requirements based on the nature of record, have in place safeguards for the conversion to and storage of electronic records including taking into account cybersecurity considerations, and have considered whether other disposal options are more practical in the short term. Therefore, the decision to destroy paper-based records should be made beyond the fact that the records have been converted to electronic records.

Amended

	<p>This provision needs to be softened as there will be many regulated entities that will need to convert hard copies into electronic copies for ease of storage and transmission. Provided that the copying of such documentation meets the legislative requirements; e.g. under the Electronic Transactions Law or other laws such as the Evidence Law (2011 Revision), the regulated entity should be able to destroy the original hard copy if they need to.</p>	<p>For clarity 9.3 will be amended to read:</p> <p>“The Authority expects that relevant entities use caution to prevent the premature destruction of paper-based records which have been converted to electronic records. A relevant entity should be satisfied that, inter alia, there are safeguards in place for the conversion of paper-based records. Legal, regulatory and organizational requirements and recommendations should be key determining factors on the retention of paper-based records.”</p>	
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