

CAYMAN ISLANDS MONETARY AUTHORITY

PRIVATE SECTOR CONSULTATION



STATEMENT OF GUIDANCE – RESPONSIBILITIES OF INSURANCE MANAGERS

A. Introduction

1. Section 34(1)(a) of the Monetary Authority Law (2013 Revision) (as amended) (“MAL”) states that –

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;*

2. Requirements specific to the private sector consultation are outlined in section 4(1) of the MAL as follows:

When this Law requires private sector consultation in relation to a proposed measure –

- (a) *the Authority shall give to each private sector association a draft of the proposed measure, together with –*

- i. an explanation of the purpose of the proposed measure;*
- ii. an explanation of the Authority’s reasons for believing that the proposed measure is compatible with the Authority’s functions and duties under section 6;*
- iii. an explanation of the extent to which a corresponding measure has been adopted in a country or territory outside the Islands;*
- iv. an estimate of any significant costs of the proposed measure, together with an analysis of the benefits that will arise if the proposed measure is adopted; and*
- v. notice that representations about the proposed measure may be made to the Authority within a period specified in the notice (not being less than thirty days or such shorter period as may be permitted by subsection (3));and*

- (b) *before proceeding with the proposed measure, the Authority shall have regard to any representations made by the private sector associations, and shall give a written response, which shall be copied to all the private sector associations.*

3. The Cayman Islands Monetary Authority (“Authority” or “CIMA”) seeks consultation and comment from the private sector associations concerning the following:

- a. Statement of Guidance- The Responsibilities of Insurance Managers

B. Background

4. The Statement of Guidance (“SOG”) about the Responsibilities of Insurance Managers was first issued in 2003. The proposed amended SOG is based on research and feedback conducted by the Authority, the Authority’s regulatory laws and comparable jurisdictions.
5. The Insurance Law, 2010 introduced section 21 with new statutory requirements that insurance managers must abide by. These statutory responsibilities are due diligence and reporting to the Authority obligations. These responsibilities include:
 - working only with fit and proper Class B and Class C licensees (“client insurers”);
 - reporting concerns about the fitness and probity of a client insurer;
 - reporting suspicion that a client insurer is unable or likely to become unable to meeting its obligations as they fall due;
 - reporting if a client insurer is in breach of any legal or regulatory requirement;
 - reporting if a client insurer is about to materially change the nature of its business;
 - reporting if a client insurer has exceeded its capital and solvency positions; and
 - either the insurance manager or client insurer notifying the Authority with 60 days written notice of the intention to terminate the management agreement.
6. Further, the Insurance Division has determined that further guidance would be beneficial to provide clarity about the Authority’s expectations regarding:
 - the requirement to have place of business in the Islands as specified in section 4(6) of the Insurance Law;
 - the requirement for segregation of assets as per section 8(3) of the Insurance Law;
 - the provision of a list of proposed and actual client insurers for whom the insurance manager acts for that is required to be filed with the Authority as part of annual return filing per section 10(2)(b) of the Insurance Law;
 - a written contract between the insurance manager and each client insurer appearing in the list with such contract outlining each party’s responsibilities;
 - informing client insurers of their obligations under the Cayman Islands regulatory framework;
 - access to and maintenance of the books and records of client insurers;
 - communication between the Authority and client insurers; and
 - the role of insurance managers.

The changes in the Insurance Law and issues experienced by the Insurance Division are the reasons why the SOG is being amended.

C. Purpose of Proposed Measure and Consistency with the Authority's Functions

7. Section 6(1) of the MAL provides that the principal responsibilities of the Authority include its regulatory functions, inter alia, "to regulate and supervise financial services business carried on in or from within the Islands."
8. Section 6(3) of the MAL provides that in performing its regulatory functions, the Authority shall, inter alia,
 - a) endeavour to promote and enhance market confidence and the reputation of the Islands as a financial centre;
 - b) recognise the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, vis a vis both consumers and suppliers of financial services, while conforming to internationally applied standards insofar as they are relevant and appropriate to the circumstances of the Islands;
 - c) recognise the principle that a burden or restriction which is imposed on a person or activity should be proportionate to the benefits, considered in general terms; and
 - d) recognise the desirability of facilitating innovation in financial services business.
9. The SOG stipulates the minimum expectations on the responsibilities of insurance managers as service providers. The SOG covers the Authority's expectations about how insurance managers should interact with their clients and the Authority. The SOG is issued in exercise of the Authority's regulatory function. It is expected the SOG will enhance market confidence and the reputation of the Islands as a financial centre.

D. Implementation in Other Jurisdictions

10. A review of certain jurisdictions, namely Bermuda, Gibraltar, Guernsey, Isle of Man and Jersey that are deemed to be competitors to the Cayman Islands in regard to insurance offerings, was conducted.

Bermuda

11. The Insurance Manager Code of Conduct issued in August 2016 is an all-encompassing enforceable code to regulate insurance managers. The Code of Conduct covers primarily the insurance managers' responsibilities as a licensee of the Bermuda Monetary Authority and not the role of insurance managers in relation to the entities which are managed. In Cayman, insurance managers' responsibilities as a licensee of the Authority are covered by other regulatory measures such as the SOG on Corporate Governance. Bermuda introduces the concept that the insurance manager may act as the principal representative for a given insurer. This role requires the insurance manager to have sufficient knowledge of the insurer to perform an "early warning" role for the Bermuda Monetary Authority.

Gibraltar

12. The Financial Services Commission issued Newsletter Number 3 in 1996. Newsletters are not enforceable but instead are used to provide information which the Financial Services Commission considers relevant. The newsletter captures the criteria for granting a licence and not explicitly the expected role of insurance managers. However, the newsletter presents the expectation that insurance managers should have the same skill and knowledge, experience, soundness of judgement, integrity and track record as if they were executive officers of the insurers. Further, the newsletter covers in detail the contractual arrangements between the insurance manager and the insurer. These contractual arrangements formed the basis of what should be included in the management agreement in the SOG.

Guernsey

13. The Insurance Managers (Conduct of Business) Rules issued in 2014 is similar to the Bermuda Code of Conduct in that they regulate insurance managers' behaviour as a licensee of the Financial Services Commission. In Guernsey, insurance managers are required for all types of insurers. The Rules are divided into principles and specific rules. The Rules regulate advertisements, complaints, professional indemnity insurance, reporting to the Commission, compliance officers, training and competence, outsourcing, and record-keeping.

Isle of Man

14. Isle of Man issued the Guidance Notes for Insurance Special Purpose Vehicles, which includes section 8 stating that a proposed insurance manager must be able to demonstrate that it has adequate knowledge and experience in relation to the business or prospective business of the entity to be managed. The second requirement is that an insurance manager must have professional indemnity insurance. Appointed insurance managers must submit a declaration agreeing:
- to provide any information the Financial Services Commission may require;
 - that the information in the application is complete and correct;
 - that the Insurance Special Purpose Vehicle will meet its legal requirements;
 - that the insurance manager has the necessary knowledge and experience; and
 - that the insurance manager has adequate professional indemnity insurance.

F. Proposed Inclusions in the Statement of Guidance

15. The amended SOG provides further clarity and guidance to insurance managers by setting out the Authority's expectations about insurance managers' obligations as service providers.
16. The SOG has been restructured to detail the Authority's expectations of the role of insurance managers, their relations with the Authority and their relations with their client insurers.

Role of Insurance Managers

17. The proposed SOG was enhanced to clarify that insurance managers must have a presence in the Cayman Islands. The SOG introduces the concept that insurance managers must not be a "shell"¹ or "letter-box"² entity. The insurance manager and the client insurers are able to appoint in writing and grant powers to other parties tasks or functions usually performed by the insurance manager. However, a balance must be struck between the insurance manager delegating and the insurance manager becoming a shell or letter-box entity.
18. Further, clarity was provided to the expectation of maintenance of proper books and records. The insurance manager should maintain complete and proper books and records for the client insurer. These records should be readily accessible for the Authority to review and maintained for a minimum period of five years.

Relations with the Authority

19. Insurance managers are expected to be the principal contact between the Authority and the client insurer. Further, detail has been provided to clarify how the role as principal contact should occur. The SOG also clarifies that the Authority may communicate directly with the client insurer.
20. Section 3 introduces further information the Authority expects the insurance manager to communicate to, monitor for and arrange for the Authority. The new expectations include:
 - a) Providing a list of potential client insurers during the initial application process to the Authority, if known;
 - b) Seeking the Authority's prior approval of a change of shareholders, directors, managers or officers of the client insurer;
 - c) Seeking the Authority's prior approval, or notifying the Authority, in accordance with the Authority's policies and procedures, of a change in the business plan of the client insurer;
 - d) Informing the Authority, in a timely manner, of any legal or regulatory breaches of the client insurer whether in the Cayman Islands or abroad; and
 - e) Monitoring the capital and solvency positions of the client insurers to ensure that such positions meet the requirements of the Insurance Law and the regulations made thereunder.

¹**Shell entity:** means an entity that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial group that is subject to effective consolidated supervision.

²**Letter-box entity:** an entity that no longer retains the necessary expertise and resources to manage the client licensed insurers.

Relations with Client Insurers

21. Section 4 details the Authority's expectations about insurance managers' relations with client insurers. This section specifies that insurance managers are required to conduct initial and ongoing client due diligence as per the Regulatory Policy on Fitness and Propriety issued by the Authority. This due diligence should include the directors and shareholders of the client insurer.
22. Further, the section introduces the expectations that insurance managers should:
- arrange access to the client insurer's business to ensure that the insurance manager is able to access and maintain accurate and adequate records of the client insurer;
 - provide in writing applicable legislation, regulations, rules, statements of principle and statements of guidance to the client insurer, together with timely updates on any changes thereto;
 - provide and explain any other information reasonably necessary for the client insurer to comply with the above; and
 - verify that client insurers understand their financial, legal and regulatory obligations.
23. The Management Agreement expectation has been updated to provide more guidance on termination conditions included in the Management Agreement.

E. Significant Costs and Benefits

24. The costs associated with the issuance of the revised SOG will be dependent upon the existing practices of insurance managers and in particular its compliance with the Insurance Law, 2010 and observance of the existing SOG issued in 2003. As the insurance managers have had sufficient time to adopt the Insurance Law and 2003 SOG, it is not anticipated that there will be significant costs incurred to implement the proposed amendments. The table below shows the estimated costs and benefits of the proposed SOG.

Table 2 – Estimated Costs and Benefits of Proposed Measure

	Costs	Benefits
<i>The Authority</i>	<ol style="list-style-type: none"> 1. Gazette and publication of new measure. 2. Amend internal supervisory manuals and procedures. 3. Training of staff. 4. Conduct consultation. 5. Answer queries from insurance managers on new SOG elements, in the short term. 	<ol style="list-style-type: none"> 1. Enhance and support regulatory processes, in particular access to records during on-site inspections. 2. Supports internal training for new staff in the Insurance Division. 3. Enhance the Authority's risk based approach to supervision. 4. Increased adoption by insurance

	Costs	Benefits
		<p>managers of sound risk management processes, which decreases compliance and enforcement costs for the Authority.</p> <ol style="list-style-type: none"> 5. The Authority having to follow up on fewer complaints from client insurers about their manager. 6. Modernized and more comprehensive SOG enhances the Authority's reputation. 7. Fewer inquiries and discussion with insurance managers regarding their role and responsibilities. 8. More accurate internal records through more specific list of information managers must provide to the Authority. 9. Increased compliance by Class B and Class C insurers with their regulatory obligations.
Cayman Islands	<ol style="list-style-type: none"> 1. To be fully effective there could be some expenditure to raise awareness of insurance managers (not necessary for the SOG to operate): <ul style="list-style-type: none"> o press releases o presentations o educational workshops 2. Some insurance managers might choose to surrender their license instead of complying with the new SOG. 	<ol style="list-style-type: none"> 1. Raise the jurisdiction's profile as an international financial centre. 2. More transparency and protection for prospective and current investors and clients of insurance managers. 3. Job creation because of greater physical presence of some managers. 4. May attract additional Class B and Class C insurers to the jurisdictions, as the quality of service providers is a key determinant in the choice of domicile of these entities. 5. Improve results of future assessments by international standard setters by increasing compliance and knowledge of Class B and Class C insurers with the regulatory framework.

	Costs	Benefits
		<ul style="list-style-type: none"> 6. Less disputes and faster resolution of disputes that do arise. 7. Enhanced reputation of jurisdiction.
<i>Insurance Managers</i>	<ul style="list-style-type: none"> 1. Cost of amending the standard management agreement template. 2. Costs of new technology to maintain and to ensure timely access to the records of their clients. 3. Cost of hiring new staff to ensure the insurance manager discharges all its obligations outlined in the SOG. 4. Cost of implementing due diligence procedures regarding the directors and shareholders of client insurers. 5. Cost of implementing a complaints policy and procedure. 6. Cost of implementing a conflict of interest policy and procedure. 7. Minor training costs to inform staff of the amended SOG. 	<ul style="list-style-type: none"> 1. Increased consistency in the approach and business practice. 2. Increase certainty for on-site inspections. 3. Better risk management practices. 4. Time savings or reduced administrative burden due to greater clarity as to the Authority's expectations of insurance managers as service providers 5. Potential growth in business due to increased clarity about the services provided 6. Reduces likelihood of disputes between manager and clients because of improved management agreement and clarified roles of parties

F. Comments and Consultation

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

- Statement of Guidance – The Responsibilities of Insurance Managers

26. The Authority must receive representations by 1700hrs on 24 March 2017.

27. Comments and representations must be addressed to
The Managing Director
Cayman Islands Monetary Authority
P.O. Box 10052
80e Shedden Road
Elizabethan Square
Grand Cayman KY1-1001
Cayman Islands
Tel: 345-949-7089
Fax: 345-946-5611
Email:

Consultation@cimoney.com.ky
[and copied to P.McAllister@cimoney.com.ky](mailto:P.McAllister@cimoney.com.ky)

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