

## **Cayman Islands Monetary Authority**

### **PRIVATE SECTOR CONSULTATION**



### **STATEMENT OF GUIDANCE - OUTSOURCING**

#### **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. Draft Statement of Guidance (SOG) on Outsourcing for all regulated entities (excluding regulated mutual funds).

## **B. Background**

4. The Authority recognizes the need for outsourcing by regulated entities in order to reduce costs, increase efficiencies and overcome internal capacity limitations in order to meet market demands and increased regulatory or legal requirements.
5. The Joint Forum on Outsourcing in Financial Services outlined a number of risks that are heightened as a result of outsourcing, including strategic risk, reputation risk and operational risk among others. Various international standard setters have issued guidance with respect to outsourcing, the risks and minimum expectations for entities that engage in outsourcing arrangements.
6. The Authority conducted self-assessments against core principles and international standards which have revealed a number of gaps or areas that can be strengthened in relation to CIMA’s regulatory framework on outsourcing.
7. Over the past years the regulatory divisions at CIMA have noted certain trends and supervisory concerns relating to the assessment, monitoring and management of outsourcing arrangements. Generally, there is a fundamental concern that outsourcing arrangements can limit or hinder supervision and even more so when offshore outsourcing is considered.
8. Currently there are ten measures (primarily SOGs) that provide guidance to regulated entities with respect to outsourcing (some more detailed than others). It is proposed that one SOG be issued in an effort to consolidate the outsourcing elements of the current relevant measures and to eliminate gaps.

## **C. Purpose of proposed SOG**

9. The purpose of issuing one guidance across the various sectors is to consolidate the current statements of guidance that speak to outsourcing as well as to provide:
  - a) main considerations for regulated entities with respect to outsourcing arrangements.
  - b) key definitions including the definition of what is considered “material” when it comes to outsourcing.
  - c) guidance on:
    - appropriate due diligence of service providers;
    - contents of an outsourcing agreement;
    - materiality assessment of outsourcing arrangements;
    - confidentiality and disclosure of information;
    - what Governing Bodies of regulated entities are expected to do with respect to the outsourcing of material functions or activities;
    - termination and exit strategy; and
    - expectations with respect to a regulated entity’s relations with CIMA regarding the outsourcing of material functions or activities.

10. The proposed SOG is designed to more closely align with the relevant international standards as well as the Group of International Finance Centre Supervisors Standard on the Regulation of Trust and Corporate Service Providers.
11. Also, the SOG will eliminate some of the risky practices seen in industry currently.
12. The proposed SOG aims to satisfy the Authority's regulatory functions as stipulated in section 6 (3) (a) of the Monetary authority Law.
13. Section 6(3) the MAL states that
- 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;*

**D. Implementation in Other Jurisdictions**

14. Table 1 shows whether the main elements of the proposed SOG are provided for in other jurisdictions' guidance. All elements are present.

*Table 1*

	<b>Bahamas</b>	<b>Bermuda</b>	<b>Canada</b>	<b>Guernsey</b>	<b>Jersey</b>	<b>Singapore</b>
<b>Guidance/ Guidelines issued</b>	YES	YES	YES	YES	YES	YES
<b>Approval Required</b>	YES	YES	NO	NO	NO	NO
<b>Notification Required</b>	YES	YES	NO <sup>1</sup>	YES	YES	YES
<b>Materiality Test Required</b>	YES	NO	YES	NO	YES	NO
<b>General considerations of outsourcing arrangements</b>	YES	YES	YES	YES	YES	YES
<b>Due diligence on service providers</b>	YES	YES	YES	YES	YES	YES
<b>Contents of outsourcing agreements</b>	YES	YES	YES	YES	YES	YES
<b>Guidance on materiality assessment</b>	YES	NO	YES	YES	YES	YES
<b>Disclosure/ confidentiality</b>	YES	YES	YES	YES	YES	YES

<sup>1</sup> It is not explicitly stated that notification or approval of OSFI is required however an institution's policies and procedures for assessing the materiality of outsourcing arrangements and managing the risks associated with outsourcing arrangements may be evaluated against the expectations of the Guideline. In addition, individual outsourcing arrangements may be subject to supervisory review.

<b>Accountability (Directors and Senior Management)</b>	YES	YES	YES	YES	YES	YES
<b>Termination/Exit</b>	YES	YES	YES	YES	YES	YES

### E. Estimation of significant costs and benefits

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

Table 2

	<b>Costs</b>	<b>Benefits</b>
<b>CIMA</b>	<ol style="list-style-type: none"> <li>1. Conduct consultation.</li> <li>2. Gazette and publication of new measure.</li> <li>3. Amend internal supervisory manuals and procedures.</li> <li>4. Training of staff.</li> </ol>	<ol style="list-style-type: none"> <li>1. Enhance and support regulatory processes, in particular on-site inspection.</li> <li>2. Supports internal training for new staff in all divisions.</li> <li>3. Ensure compliance with International Standards of supervision set by BASEL, IOSCO, IAIS and GIFCS.</li> <li>4. Enhance the Authority's risk based approach to supervision.</li> <li>5. Consolidate guidance on outsourcing in one measure across sectors.</li> <li>6. Increased adoption by regulated entities of sound risk management processes decreases compliance and enforcement costs for CIMA.</li> </ol>
<b>Cayman Islands</b>	<ol style="list-style-type: none"> <li>1. To be fully effective there could be some expenditure (not necessary for SOG to operate) to raise awareness of consumers: <ul style="list-style-type: none"> <li>o press releases</li> <li>o presentations</li> <li>o educational workshops</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>1. Raise the jurisdiction's profile as an international financial centre.</li> <li>2. More transparency and protection for prospective and current investors and clients of regulated entities.</li> <li>3. Lessen the risks attached to the practice of outsourcing material functions or activities.</li> <li>4. Improve results of future assessments by international standard setters.</li> </ol>
<b>Regulated Entities</b>	<ol style="list-style-type: none"> <li>1. Minor training costs to ensure relevant staff are properly assessing, monitoring, and managing the outsourcing of material functions or activities.</li> <li>2. Legal cost of ensuring SLAs are</li> </ol>	<ol style="list-style-type: none"> <li>1. Increased consistency in the approach and business practice with regard to outsourcing.</li> <li>2. Reduces risks relating to the outsourcing of material functions or activities.</li> </ol>

	<b>Costs</b>	<b>Benefits</b>
	<p>appropriately negotiated and in place.</p> <p>3. Enhancement or implementation of appropriate policies and procedures with respect to the outsourcing of material functions.</p> <p>4. Costs of including outsourcing in risk management framework (if not already present).</p> <p>5. Costs of conducting assessments of service providers.</p>	<p>3. Increase certainty for on-site inspections.</p> <p>4. Legally binding outsourcing agreements will ensure regulated entities are able to resolve disputes more efficiently.</p> <p>5. Increased certainty about which outsourcing practices are acceptable to CIMA (potentially leading to increased outsourcing and cost reductions)</p>

**F. Comments and Consultation**

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

- Draft SOG on Outsourcing for all regulated entities.

17. The Authority must receive representations by 1700hrs on May 11 2015.

18. 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](mailto:Consultation@cimoney.com.ky)  
 and copied to [b.francis@cimoney.com.ky](mailto:b.francis@cimoney.com.ky)

19. 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.