



# **RULES AND STATEMENT OF GUIDANCE**

## **Nature, Accessibility and Retention of Records for Trust Service Providers and Corporate Service Providers**

**XX 202X**





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### List of Acronyms

<b>AMLR</b>	Anti-Money Laundering Regulations
<b>BTCA</b>	Banks and Trust Companies Act
<b>CIMA</b>	Cayman Islands Monetary Authority
<b>CMA</b>	Companies Management Act
<b>CSP</b>	Corporate Service Provider
<b>IA</b>	Insurance Act
<b>LLCA</b>	Limited Liability Companies Act
<b>LLPA</b>	Limited Liability Partnership Act
<b>MAA</b>	Monetary Authority Act
<b>MFA</b>	Mutual Funds Act
<b>POCA</b>	Proceeds of Crime Act
<b>PTCR</b>	Private Trust Companies Regulations
<b>SOG</b>	Statement of Guidance
<b>TSP</b>	Trust Service Provider



# **Rules and Statement of Guidance on Nature, Accessibility, and Retention of Records for Trust Service Providers and Corporate Service Providers**

## **1. Introduction**

- 1.1. This document establishes the Cayman Islands Monetary Authority's (the "Authority" or "CIMA") Rules and Statement of Guidance (Rules and Guidance) on Nature, Accessibility, and Retention of Records for Trust Service Providers and Corporate Service Providers. The Rules and Statement of Guidance should be read in conjunction with the following:
- a) Monetary Authority Act ("MAA");
  - b) Banks and Trust Companies Act ("BTCA");
  - c) Companies Act ("CA");
  - d) Companies Management Act ("CMA");
  - e) Insurance Act ("IA");
  - f) Mutual Funds Act ("MFA");
  - g) Statement of Guidance – Licensing Company Managers/Corporate Service Providers;
  - h) Statement of Guidance – Business Continuity Management
  - i) Statement of Guidance – Internal controls for Trust Companies, Company Managers and Corporate Service Providers
  - j) Statement of Guidance on Outsourcing;
  - k) Rule on Cybersecurity for Regulated Entities;
  - l) Statement of Guidance on Cybersecurity for Regulated Entities;
  - m) Guidance Notes on the Prevention and Detection of Money Laundering, Terrorist Financing, and Proliferation Financing in the Cayman Islands; and
  - n) any other relevant acts and regulatory instruments issued by the Authority from time to time.
- 1.2. In order to highlight the Authority's Rules within the compendium, a Rule is written in light blue and designated with the letter "R" in the right margin.

## **2. Statement of Objectives**

- 2.1. The Rules and Guidance are intended to establish minimum requirements for licensees engaged in the business of company management, under the Companies Management Act (CMA), Banks and Trust Companies Act (BTCA), Mutual Funds Act (MFA), and Insurance Act (IA), and trust business, under the BTCA, to maintain their records in a manner that promotes accessibility, retention and appropriate security.
- 2.2. The Authority recognises that the arrangements for record keeping will vary according to the manner in which the business of the licensee is structured, organised and managed; its size; and the nature, volume and complexity of its transactions and commitments. The overriding principle, however, is that the records and systems must be adequate to satisfy the requirements of the Authority and relevant regulations and laws. All regulatory laws allow the Authority to access and inspect records maintained by licensees. The Anti-Money Laundering Regulations (AMLRs) also require the maintenance of certain

records. It is expected that record keeping arrangements to comply with the regulatory laws may be additional to the record keeping arrangements required under other acts and regulations.

- 2.3. The Rules herein establish the minimum requirements whereas the Guidance, not intended to be prescriptive or exhaustive, sets out the Authority's minimum expectations of a licensee's record keeping arrangements.
- 2.4. Record keeping requirements apply to all relevant persons and entities.
- 2.5. The measure is consistent with the Authority's statutory objectives as prescribed in the Monetary Authority Act (MAA), including Section 34 of the MAA which provides that the Authority may issue rules, statements of principles or guidance:

*"(1) After private sector consultation and consultation with the Minister charged with responsibility for Financial Services, 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 [acts] may apply;"*

### **3. Scope of Application**

- 3.1. The Rules and Guidance applies to all persons conducting the business of company management pursuant to Section 3(1)(a) – (l) of the CMA, as follows:
  - a) Acting as a company formation agent;
  - b) Providing a registered office or business address for a company;
  - c) Providing an accommodation, correspondence or administrative address for a company or for any other person;
  - d) Filing statutory forms, resolutions, returns and notices;
  - e) Acting or fulfilling the function of or arranging for another person to act as or fulfil the function of a person authorised to accept service of process on behalf of a foreign company carrying on business in the Islands or to accept any notices required to be served on it;
  - f) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of an officer of a company;
  - g) acting as a nominee shareholder for a company;
  - h) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of director or alternate director of a company;
  - i) acting as or arranging for another person to act as secretary, alternate, assistant or deputy secretary of a company;
  - j) acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of an authorised custodian for the purposes of the Companies Law (as amended);
  - k) providing other corporate services involving the control of the whole or a substantial part of the assets of a company; and
  - l) providing any additional corporate services as may be specified in regulations.



- 3.2. The Authority acknowledges that TSPs and CSPs 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 Rules and Guidance and that are appropriate for the particular operations of that legal entity.
- 3.3. The TSPs and CSPs must assess whether record keeping practices 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.
- 3.4. The Rules and Guidance does not codify or amend any existing law. Where the Rules and Guidance is incompatible with existing law, the law takes precedence and prevails.
- 3.5. The Authority will consider the contents of the Rules and Guidance in its supervisory processes including onsite inspection.

#### 4. Definitions

- 4.1. The following definitions are provided for the purpose of this Rules and Guidance:
  - a) **“Business of company management”** has the same meaning as that prescribed in the Companies Management Act.
  - b) **“Corporate Service Provider” (“CSP”)** means a person that holds a licence under the Company Management Act, or a person exempted under the Company Management Act as a:
    - a) trust company which is the holder of a Trust licence to carry on trust business granted under the BTCA;
    - b) trust company which is the holder of a Restricted Trust licence granted under the BTCA in respect of the clients and services specified in the restrictions;
    - c) trust company which is the holder of a Nominee (Trust) licence granted under the BTCA in respect of the nominee function only;
    - d) holder of an Insurance Managers licence issued under the Insurance Act when engaged in the business of company management in respect of his clients who are insurance companies licensed under that Act; or
    - d) holder of a Mutual Funds Administrator’s licence granted under the Mutual Funds Act when engaged in the business of company management in respect of his clients who are mutual funds whether or not licensed or regulated under that Act.



- c) **“Electronic record”** has the same meaning as defined in the Electronic Transactions Act (as amended).
- d) **“Original”** include records originating electronically or electronic copies of paper-based records.
- e) **“Record”** has the same meaning as “document” as defined in the MAA and includes paper-based records.
- f) **“Trust Service Provider” (“TSP”)** means a person carrying on trust business under the BTCA.

## 5. General

- 5.1. All records must be legible and easily accessible. R
- 5.2. Personal data must be processed in accordance with the data protection principles as set out in the Data Protection Act. The main objective is to protect customers against theft, accidental loss, unauthorised access, and accidental destruction of data. TSPs, CSPs, and persons conducting the business of company management should therefore have appropriate personal data security measures, record retention policies, personal data breach response plan, and systems for data subjects to be able to exercise their rights. R
- 5.3. Accessible records are records that can be provided by the TSP, CSP, and persons conducting the business of company management to the Authority within a reasonably short timeframe. The Authority expects that most records must be provided immediately by the Authority, or within the timeframe as determined from time to time by the Authority, whether stored within the Cayman Islands or in another jurisdiction. R
- 5.4. A TSP, CSP, and persons conducting the business of company management must keep, maintain, and treat records as required by applicable Acts such as the Companies Act, the Limited Liability Companies Act (LLCA), the Limited Liability Partnership Act (LLPA), the Partnership Act, the CMA, the BTCA, the Proceeds of Crime Act (POCA), the Private Trust Companies Regulations (PTCR), and any other relevant legislation. R
- 5.5. A TSP, CSP and persons conducting the business of company management must keep records of books of accounts and other financial affairs as well as other records. Some examples include: R
  - a) corporate accounting records;
  - b) organisational records such as insurance coverage records and cybersecurity framework;
  - c) employee and other administrative records;
  - d) risk management policies;
  - e) corporate records such as incorporation documents, shareholders and directors meeting minutes and board resolutions, and beneficial ownership information;



- f) client records such as client communication and complaints records;
  - g) service provider records such as copies of contracts and agreements;
  - h) customer due diligence records;
  - i) trust deeds;
  - j) annual returns due to the Authority; and
  - k) any other records as required by relevant regulatory or other laws for the period specified by the regulatory or other laws.
- 5.6. Record keeping must be sufficient to enable the Authority to monitor compliance with regulatory and anti-money laundering/countering terrorism financing/ countering proliferation financing obligations. R
- 5.7. TSPs, CSPs and persons conducting the business of company management 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.
- 5.8. A TSP, CSP and persons conducting the business of company management 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 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.
- 5.9. Records must 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. R
- 5.10. A TSP, CSP and persons conducting the business of company management may accept and rely on records supplied by a third party so long as those records are capable of being, and are, reconciled with records held by the TSP and CSP.
- 5.11. Where it is impractical for a TSP, CSP or persons conducting the business of company management to maintain its own records and records are retained by a third party, the TSP, CSP, or persons conducting the business of company management maintains ultimate responsibility for record retention and ensuring records can be retrieved in a timely fashion. The TSP, CSP or persons conducting the business of company management remains responsible for compliance with all record-keeping requirements and for accessibility of records by the Authority.
- 5.12. TSPs, CSPs and persons conducting the business of company management must ensure that all customer due diligence information and transaction records are available without delay upon request by the Authority. R

## 6. Records Retention Timeframe



- 6.1. TSPs, CSPs, and persons conducting the business of company management must 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. R
- 6.2. This statement is without prejudice to other legal obligations the TSPs, CSPs or persons conducting the business of company management may have to keep records for certain periods of time, but does stipulate the minimum time period for which records must be kept. For example, where a fiduciary relationship has been formed with clients it may be necessary to keep records for longer periods of time. In the case of trusts for example, the requirement to keep records may last for the lifetime of the trust and for further periods thereafter.

## 7. Elements of Records Management

- 7.1. A TSP, CSP, or persons conducting the business of company management must maintain adequate procedures for the availability, maintenance, security, privacy and preservation of records, working papers and documents of title belonging to the TSP and CSP, clients or others so that they are reasonably safeguarded against loss, unauthorised access, alteration or destruction. This includes records retained electronically or by any other medium. R
- 7.2. 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.
- 7.3. Where a TSP, CSP or persons conducting the business of company management maintains records belonging to another TSP, CSP, or persons conducting the business of company management who is a client, it should ensure that client records are treated in accordance with the practices outlined in this Rules and Guidance.
- 7.4. A TSP, CSP, or persons conducting the business of company management should review its record keeping arrangements periodically including where third parties are involved, and make adjustments if necessary.
- 7.5. The Authority understands that as a normal course of doing business, there will be instances where there is merger, transfer, or discontinue activities. Nonetheless, the Authority expects that TSPs, CSPs, or persons conducting the business of company management have a plan in place for the treatment of records once an entity ceases to do business. The Authority must be informed of where and how records may be accessed once a TSP, CSP or persons conducting the business of company management ceases to carry on business. R  
Notwithstanding cessation of business, record-keeping requirements should be met for the period required by the regulatory or other laws.

## 8. Keeping of Accounting Records

- 8.1. A TSP, CSP, or persons conducting the business of company management must record information likely to be required by the Authority in such a way as to R



enable a particular transaction to be identified at any time and traced through the accounting systems, in particular in such manner as to enable early identification of balances and of the particular items which make up those balances.

- 8.2. A TSP, CSP, or persons conducting the business of company management must keep proper accounting records in such a manner that they are sufficient to show and explain the transactions and commitments (whether effected on its own behalf or on behalf of others including clients) and in particular so that these records:
- a) disclose with accuracy and completeness the financial position for a minimum of five years of operation or for a time period as required under the Anti-Money Laundering Regulations (AMLRs); R
  - b) demonstrate whether or not the TSP, CSP, or persons conducting the business of company management is or was at that time complying with its financial resources requirement, where applicable (e.g capital requirements); and R
  - c) enable the TSP, CSP, or persons conducting the business of company management to prepare, within a time period specified by the Authority, any financial reporting statement required by the Authority as at the close of business for any date within the previous five years, and that the statement complies with the requirements of the Authority. R
- 8.3. A TSP, CSP, or persons conducting the business of company management should ensure that its accounting records shall as a minimum contain:
- a) a record of all assets and liabilities including any commitments or contingent liabilities;
  - b) a record of all income and expenditure explaining its nature;
  - c) a record of all investments or documents of title in the possession or control of the TSP, CSP, or persons conducting the business of company management, showing the physical location, the beneficial owner, the purpose for which they are held and whether they are subject to any charge;
  - d) entries from day to day of all sums of money received and expended whether on its behalf or on behalf of others (including clients), and the matters in respect of which the receipt and expenditure takes place;
  - e) entries from day to day of all purchases and sales of investments distinguishing those which are made by the TSP, CSP, or persons conducting the business of company management on its own account and those which are made by or on behalf of others (including clients); and
  - f) entries from day to day of the receipt and dispatch of documents of title, which are in the possession or control of the TSP, CSP, or persons conducting the business of company management.

## 9. Maintenance of Records Outside of the Cayman Islands



- 9.1. TSPs, CSPs, or persons conducting the business of company management that maintain their accounting and other records in a location outside of the Cayman Islands, should also ensure that:
- a) The data is kept secure and they mitigate against operational risk; and
  - b) They are familiar with The Confidential Information Disclosure Act.
- 9.2. When records are held outside of the Cayman Islands, TSPs, CSPs, or persons conducting the business of company management must ensure that the Authority will have access to records at all reasonable times in accordance with the relevant laws and within the time stipulated in 5.3. R
- 9.3. Where a TSP, CSP, or persons conducting the business of company management has no physical presence in the Cayman Islands, there must be no restrictions to the access of records by the Authority regarding the entity or its clients. R
- 9.4. Where records are maintained outside the Cayman Islands through outsourcing, storage, or other arrangements, the TSP, CSP, or persons conducting the business of company management remains ultimately responsible for record keeping requirements and accessibility to records by the Authority.
- 9.5. A TSP, CSP, or persons conducting the business of company management should not keep records outside the Cayman Islands if access to those records by the Authority is likely to be restricted or delayed by confidentiality or data protection restrictions. Where such restrictions exist, it is expected that the TSP or CSP maintain the same records within the Cayman Islands.

## 10. Electronic Records

- 10.1. It is expected that a TSP, CSP, and persons conducting the business of company management treat electronic records with the same requirements as paper-based records. The scanning of paper-based records, and the creation, retention, storage, and disposal of records, using emerging technologies such as cloud-based services should adhere to the same record-keeping standards as paper-based records.
- 10.2. The Authority understands that electronic records can be more practical than paper-based records for disaster preparedness and storage reasons. Record retention may be in the form of electronic records unless specified otherwise by regulatory or other laws. Electronic records must be of good quality, be an accurate reflection of the paper-based record (where one exists), must be complete and unaltered, and be easily accessible and reproduced in hard copy.
- 10.3. The Authority expects that caution is used against the premature destruction of paper-based records which have been converted to electronic records. A TSP, CSP, or persons conducting the business of company management 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.

10.4. The conversion of any paper-based record to an electronic record must not hinder the availability of such records to the Authority. The use of technology to handle records does not absolve of any regulatory or legal obligations for record-keeping.

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10.5. The Authority expects that TSPs, CSPs, and persons conducting the business of company management will comply with the Electronic Transactions Act (as amended).

## **11. Enforcement**

11.1. Whenever there has been a breach of these Rules, the Authority's policies and procedures as contained in the Enforcement Manual will apply, in addition to any other powers provided in the regulatory Acts and the MAA.

## **12. Effective Date**

12.1. The Rules and Guidance will come into effect exactly six months from the date is the measure is published in the Gazette.



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