



RULES AND STATEMENT OF GUIDANCE

Minimum Criteria for Maintaining Physical Presence for Licensees Providing Business of Company Management and Trust Business

FOR CONSULTATION



RULES AND STATEMENT OF GUIDANCE – MINIMUM CRITERIA FOR MAINTAINING PHYSICAL PRESENCE FOR LICENSEES PROVIDING BUSINESS OF COMPANY MANAGEMENT AND TRUST BUSINESS

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List of Acronyms

BTCA	Banks and Trust Companies Act
CA	Companies Act
CIMA	Cayman Islands Monetary Authority
CMA	Companies Management Act
CSP	Corporate Service Provider
IA	Insurance Act
KYC	Know Your Customer
MAA	Monetary Authority Act
MFA	Mutual Funds Act
TSP	Trust Service Provider

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Rules and Statement of Guidance - Minimum Criteria for Maintaining Physical Presence for Licensees Providing Business of Company Management and Trust Business

1. Introduction

- 1.1. This document establishes the Cayman Islands Monetary Authority's (the "Authority" or "CIMA") Rules and Statement of Guidance on the Minimum Criteria for Maintaining Physical Presence for Licensees Providing Business of Company Management and Trust Business ("the Rules and Guidance").
- 1.2. The Rules and Guidance should be read in conjunction with the following:
 - a) Banks and Trust Companies Act ("BTCA");
 - b) Companies Act ("CA");
 - c) Companies Management Act ("CMA");
 - d) Insurance Act ("IA");
 - e) Monetary Authority Act ("MAA");
 - f) Mutual Funds Act ("MFA");
 - g) Statement of Guidance – Responsibilities of Authorised Agents of Banks and Trust Companies; and
 - h) any other relevant acts and regulatory instruments issued by the Authority from time to time.

2. Statement of Objectives

- 2.1. The Rules and Guidance are intended to establish minimum requirements for Trust Service Providers ("TSPs") engaged in trust business under the BTCA, and Corporate Service Providers ("CSPs") engaged in the business of company management under the CMA, BTCA, MFA and IA, to maintain physical presence in the Cayman Islands. The Authority recognises that the establishment and maintenance of physical presence by TSPs and CSPs facilitates the Authority's ongoing supervision in accordance with international standards and best practice.
- 2.2. The Rules and Guidance aim to ensure that prospective and existing licensees apply clear, minimum standards and key principles in the preparation of licence applications and in conducting the business of company management and trust business in the Cayman Islands.
- 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 relevant entity's record keeping arrangements.

3. Statutory Authority

- 3.1. Section 34 of the Monetary Authority Act (the "MAA") provides that:

"(1) After private sector consultation and consultation with the Minister charged with responsibility for Financial Services, the Authority may–



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(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;...

- 3.2. Section 6(1)(b) of the MAA provides that as part of the Authority's regulatory functions, it has the responsibility to:

"(ii) to monitor compliance with the anti-money laundering regulations; and

(iii) to perform any other regulatory or supervisory duties that may be imposed on the Authority by any other law;"

- 3.3. In order to highlight the Authority's rules related to the minimum requirements for physical presence within the compendium, a rule is written in light blue and designated with the letter "R" in the right margin.

4. Scope of Application

- 4.1. These Rules and Guidance apply to all persons conducting business of company management, pursuant to Section 3(1)(a)–(f) 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; and
- 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; or
- 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.

- 4.2. Pursuant to Section 5(5) of the CMA, these Rules and Guidance also apply to persons conducting business of company management as holders of:

- a) a Mutual Funds Administrators licence under the MFA;
- b) an Insurance Managers licence under the IA;
- c) a Trust licence under the BTCA;
- d) a Restricted Trust Licence under the BTCA; and
- e) a Nominee Trust licence under the BTCA.

- 4.3. These Rules and Guidance do not codify or amend any existing law. Where the Rules and Guidance are incompatible with existing law, the law takes precedence and prevails.

- 4.4. The Authority will consider the contents of the Rules and Guidance in its supervisory functions including on-site inspections.



5. Definitions

5.1. The following definitions are provided for the purpose of these Rules and Guidance:

- a) **“Authorised Agent”** means a person so designated under the Banks and Trust Companies Act.
- b) **“Business of company management”** has the same meaning as that prescribed in the Companies Management Act.
- c) **“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 Banks and Trust Companies Act;
 - b) trust company which is the holder of a Restricted Trust licence granted under the Banks and Trust Companies Act 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 Banks and Trust Companies Act 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
 - e) 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.

6.

- a) **“Islands”** means the Cayman Islands.
- b) **“Licensee”** means a person that holds a trust licence under the Banks and Trust Companies Act; an Insurance Managers licence under the Insurance Act; a Corporate Service licence under the Companies Management Act; and a Mutual Funds Administrators licence under the Mutual Funds Act.
- c) **“Senior Officer”** has the same meaning as that prescribed in the Companies Management Act.
- d) **“Trust business”** has the same meaning as that prescribed in the Banks and Trust Companies Act.
- e) **“Trust Service Provider” (“TSP”)** means a person carrying on trust business under the Banks and Trust Companies Act.



7. General Considerations

- 7.1. Licensees engaged in business of company management, pursuant to Section 3(1)(a)–(f) of the CMA, must establish and maintain physical presence in the Cayman Islands. R
- 7.2. Licensees must inform the Authority of any development that: R
- a) may result in a necessary change to the presently approved physical presence arrangement; or
 - b) may cast doubt on the continuing fitness and propriety of its management and staff.
- 7.3. To allow for the conduct of on-site inspections and to perform all other supervisory functions, a licensee must allow the Authority access, at all reasonable times, to its premises. R
- 7.4. A licensee must not hinder the Authority from performing its functions. R

8. Minimum Criteria for Maintaining Physical Presence

This section presents the minimum requirements for physical presence. The requirements should not be considered exhaustive.

Governance, Direction and Management

- 8.1. Licensees shall at no time have less than two (2) directors, or any other number specified by the Authority. R
- 8.2. In addition to Section 8.1, the Authority may require more than two directors so as to ensure continuity, competency, and efficiency of operations. Licensees should consider having the majority of directors resident in the Islands.
- 8.3. In carrying out business of company management in the Islands, senior officers including directors and managers, must remain fit and proper. R
- 8.4. Persons representing the mind and management, or persons actively involved in the governance of the business, including senior officers of the licensee should be resident in the Islands.
- 8.5. Licensees must seek the Authority's written prior approval for the appointment of a director or other senior officer that is resident in the Islands or elsewhere. R
- 8.6. Staffing levels of a licensee should be commensurate with the size, scope, and complexity of the licensee's operations. The need for additional resources will depend on changes in the licensee's activities and business plan.
- 8.7. A licensee should ensure that their affairs are conducted in a prudent and financially sound manner and should satisfy through their staff the "4-eyes" principle, or "6-eyes" principle where relevant.



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- 8.8. Persons licensed under the BTCA, or the MFA, must appoint at least two (2) individuals or a body corporate to act as its agent. R
- a) Where the authorised agent are natural persons, they must physically reside in the Islands. An authorised agent may be appointed to act separately or jointly but at least two (2) of such persons must nonetheless reside in the Islands.
 - b) Where a body corporate is the authorised agent they must be incorporated in the Islands and hold a licence.
- 8.9. Where the authorised agent is a body corporate it shall have no fewer than two (2) directors. R
- 8.10. Licensees must notify and seek the Authority's prior approval to change its agent. R

Corporate Service Providers

- 8.11. Where a director or senior officer is convicted in any country of an offence involving dishonesty, the CSP must remove or replace the director or senior officer within fourteen (14) days of the conviction. CSPs must seek prior written approval from the Authority for any removals and replacements. R

Physical Premises and Facilities

- 8.12. All Licensees engaged in or carrying out any of the following business of company management must have a physical presence in the Islands: R
- 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; and
 - 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; or
 - 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.
- 8.13. All licensees must have a registered office that is physically situated in the Islands to which all communications and notices may be addressed. R
- 8.14. The premises of the registered office should be identifiable by office space that is commensurate with the size, complexity, and nature of the licensee's operations.



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- 8.15. The registered office space should have dedicated, secure, and appropriate for custody and storage of records, communication equipment¹, and other equipment for the operation of the business.
- 8.16. Registered offices to be maintained in the Islands must consider: R
- a) Maintaining an appropriate, dedicated and secure office space(s) that is consistent with its needs;
 - b) Maintaining appropriate and secure facilities (e.g. Filing cabinets, electronic storage facilities, etc.) For the custody and storage of records and documents;
 - c) Maintaining appropriate communications facilities; and
 - d) Maintaining dedicated mechanical and/or electronic facilities necessary to record and process the licensee’s business activities.

Trust Service Providers and Corporate Service Providers

- 8.17. TSPs and CSPs must have a principal office in the Islands, that is approved by the Authority. R

Sharing of Premises and Facilities

- 8.18. Where a licensee shares premises and facilities with another business, the licensee must ensure that all criteria for physical presence are met and that there is a clear physical separation between the operations, and record storage of the licensee and those of the other business. R
- 8.19. Licensees must ensure that proper controls in place to prevent unauthorised access to its systems, books and records, and other assets. R
- 8.20. Where a licensee shares premises and facilities with another business, the Authority must, at all reasonable times, be able to conduct on-site inspections. R

Change in Physical Premises

- 8.21. Licensees under the BTCA, MFA must seek prior written approval from the Authority to change its principal office in the Islands. R
- 8.22. CSPs must seek prior written approval from the Authority to: R
- a) open a subsidiary, branch, agency or representative office outside of the Islands; or
 - b) change their name.

Records and Record-Keeping

- 8.23. Management information should be both timely and accurate and supported by complete and accessible records. Such records must be accessible by the Authority in the Islands. R

¹ including dedicated telephones, fax machines, and computers.



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- 8.24. Licensees must have proper arrangements such as an “ethical wall” or “ethical barrier” in place for the segregation of books and records. R

Trust Service Providers

- 8.25. At a minimum, a TSP should keep the following records, in original form, hard copy or in an electronic format that is easily accessible at their premises in the Islands:

- a) Corporate records of a TSP and minutes of shareholders’ directors’ and management committee meetings;
- b) Policies, procedures, and operating manuals;
- c) Reports prepared by internal and/or external auditors;
- d) Information on employee training programs and training manuals;
- e) Correspondence with the Authority, and records on monitoring compliance with the Authority’s licensing and other requirements;
- f) Records with respect to all client relationships that remain active or dormant. These records include, at a minimum, the following;
 - i. Original client account opening and due diligence documentation including, identification information, sufficient to confirm compliance with all regulatory KYC requirements, for all client facilities maintained in the Cayman Islands;
 - ii. Information on all current client transactions and relevant correspondence sufficient to properly monitor the accounts and other facilities for suspicious activity conducted through the TSP.
- g) Accounts, books, files, and other documents that record all of the business affairs of the TSP; and
- h) Any other information that substantiates the nature and the value of all assets, liabilities and off-balance sheet activities and transactions and ordinary and extraordinary income and expenses; (e.g. client credit files and documentation, investment account files and statements, files on assets under management/trusts, etc.).

- 8.26. TSPs must allow the Authority to conduct on-site inspections. All corporate records, manuals, and other documents outlined in Section 8.25 shall be made available to the Authority during an on-site inspection. R

Corporate Service Providers

- 8.27. At a minimum, CSPs should keep the following records, in original form or in hard copy, at their premises in the Islands:

- a) Registers of members, directors, officers, mortgages and charges.
- b) Original opening of account by clients and all relevant due diligence and KYC documentation required under under the *Guidance Notes on the Prevention and Detection of Money Laundering in the Cayman Islands*.
- c) Information to monitor on an ongoing basis, the relevant activities in the course of the business relationship. This would include, but not limited to, the following:
 - i) transaction type
 - ii) frequency



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- iii) amount
- iv) geographic origin/destination
- v) account signatories
- d) Share certificates, special resolutions, and other filing requirements with the Registrar of Companies.
- e) Accounts, books, files and other documents that are subject to inspection by the Authority.
- f) All correspondence to and from the Authority.

9. Enforcement

- 9.1. In the event of non-compliance with this measure by a licensee, the Authority's policies and procedures as contained in its Enforcement Manual will apply, in addition to any other powers provided in the BTCA, CMA, IA, MAA and MFA.

10. Effective Date

- 10.1. For new licence applicants, the Rules and Statement of Guidance will come into effect immediately on the date the measure is published in the Gazette.
- 10.2. For existing licensees, the Rules and Statement of Guidance come into effect exactly six (6) months from the date the measure is published in the Gazette.

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