



PRIVATE SECTOR CONSULTATION

Deregistration of Private Trust Companies

August 2020

Private Sector Consultation
RULE: DEREGISTRATION OF PRIVATE TRUST COMPANIES

A. Introduction

1. Section 34(1)(a) of the Monetary Authority Law (2020 Revision) ("MAL") states that:

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 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 ("the Authority") seeks consultation and comment from the private sector associations concerning the Rule on Deregistration of Private Trust Companies ("the Rule") (attached as Appendix 1).

B. Background

4. The Private Trust Companies Regulation (PTCRs) defines a Private Trust Company ("PTC") as a trust company which:
- (1) is incorporated in the Islands; and
 - (2) conducts no trust business other than connected trust business.

5. By law, a PTC is required to be registered by the Authority before carrying out trust business. Whilst there are explicit requirements for registration of PTCs, there are no formal measures for the deregistration of the same. Considering this, the Authority conducted a review of its current deregistration practices and the domestic legal requirements that are in place for the deregistration of PTCs with the intention of putting formal measures in place. For the purposes of this paper, the term “deregistration” refers to instances where the cancellation of a registration is being initiated by the registrant.
7. The Authority, further to conducting the review, proposes that a Rule on Deregistration of Private Trust Companies be issued to provide clarity on the Authority’s requirements supplementary to section 4B (1) of the Private Trust Companies Regulations (“the PTCRs) which outlines when the Authority may refuse or cancel the registration of a PTC. These are where:
 - (1) the private trust company requests the cancellation; or
 - (2) the Authority has reasonable grounds to believe that a private trust company or any principal of a private trust company —
 - (a) is conducting business in breach of the Anti-Money Laundering Regulations (2020 Revision) or any other applicable law; or
 - (b) is not or ceases to be a fit and proper person.
8. It is expected that the proposed Rule will provide certainty on the deregistration requirements for PTCs, thereby reducing inefficiencies in the deregistration process.

C. International Standards

9. The international standard setting bodies for the respective industry sectors, mandate, that regulators have the legal power to license/register an entity and to revoke; terminate; suspend or withdraw the licence of an entity where applicable. International standards recognise the need to distinguish entities and persons that are authorized. In keeping with those principles, regulators are obliged to terminate an authorization where needed and to facilitate an orderly exit from the marketplace.

D. Purpose of Proposed Measure and Consistency with the Authority’s Functions

10. 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”.
11. 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) endeavour to reduce the possibility of financial services business or relevant financial business being used for the purpose of money laundering or other crime;
 - c) 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;

- d) 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;
 - e) recognise the desirability of facilitating innovation in financial services business; and
 - f) recognise the need for transparency and fairness on the part of the Authority.
12. The Rule is being issued as part of the Authority’s mandate to regulate and supervise financial services business carried on in or from within the Islands by ensuring that, the Authority not only has adequate measures in place for the registration of its financial institutions, but that there are also adequate measures in place for the orderly exist of same entities.

E. Jurisdictional Comparison

13. A jurisdictional comparison was conducted to establish what requirements and procedures are in place for the deregistration of entities in other jurisdictions. Six (6) jurisdictions were assessed against the Cayman Islands; namely, the United Kingdom, Australia, Guernsey, Ireland, Hong Kong, Bermuda. The findings reflect that all 6 jurisdictions had explicit requirements in place for deregistration or cancellation of registered entities.
14. In terms of procedure, all jurisdictions required that notice in writing be sent to the respective Authority to file for deregistration or for a deregistration application form to be completed. In some cases, supporting documents are required. Once the application is assessed by the respective Authority, the applicant is notified, usually by way of a notice and a public notice is issued.
15. Three of the six (6) jurisdictions charge a deregistration fee.
16. The results from the jurisdictional comparison support the need for the Cayman Islands to issue regulatory measures for the deregistration of PTCs. The Authority has incorporated some of the requirements found in other jurisdictions on deregistration in the Rule to ensure that the requirements are aligned with those in other jurisdictions which are considered the Cayman Islands counterparts.

F. Cost and Benefit Analysis

Cost-Benefit Analysis of Implementing the Proposed Measures

17. Table 1: presents the cost and benefit analysis for implementing the Rule.

	Costs	Benefits
CIMA	<p>The Authority will incur administrative costs associated with the following:</p> <ul style="list-style-type: none"> - gazettement and publishing of the new Rule. - updating internal manual(s). 	<p>The imposition of the Rule will clarify and streamline the deregistration process thereby resulting in:</p> <ul style="list-style-type: none"> - less time being spent liaising with applicants¹ on incomplete applications and responding to queries;

¹ The person or entity applying to the Authority to be deregistered.

	Costs	Benefits
	<ul style="list-style-type: none"> - conducting private sector consultation; and - training staff on the contents of the newly issued Rule and Procedure. <p>These costs are not considered overly burdensome and represent the usual costs of the Authority carrying out its mandate.</p>	<ul style="list-style-type: none"> - consistency and efficiency in the deregistration process; and - the Authority being able to take enforcement action when there is a breach.
Cayman Islands	<p>There are no expected costs to the jurisdiction with the implementation of these requirements.</p>	<p>The jurisdiction as a whole stands to benefit:</p> <ul style="list-style-type: none"> - from an improvement in its reputation due to having a well- regulated financial system in place. This will in turn raise the jurisdiction's profile, attract customers and ultimately increase revenue for the country; - from improved results of international assessments which will attract new customers.
Registrants	<p>Entities will bear the costs associated with:</p> <ul style="list-style-type: none"> - Providing required or supporting documents such as a Certificate of Dissolution/Change of Name for the deregistration. 	<p>Entities will benefit from the issuance of the proposed measures as the measures will provide clarity and transparency on what is required for the deregistration process. This will allow applicants to gather all the requisite documentation and information prior to the commencement of the deregistration process; thereby reducing time spent sending queries to the Authority on what is required for deregistration to take place.</p>
Summary	<p>Consequent to the above, it is evident that implementing the proposed measure stand to benefit the Authority, the jurisdiction and registrants considerably when weighed against the costs of the same.</p>	

G. Consultation Feedback and Comments

18. Before proceeding with the proposed measure, the Authority shall have regard to any representations made by the private sector associations only. Feedback submitted by individuals, entities, or other bodies, unless acting on behalf of private sector associations, will not be accepted by the Authority. Representations from private sector associations must be submitted as a consolidated document, and a listing of the entities which provided feedback should be included. Private sector associations should ensure that conflicting positions are resolved prior to submission to the Authority. Where positions conflict within or across associations, the Authority will

consider all available information in taking a decision, which will be at its sole discretion.

19. To ensure that all responses are given due consideration, it is important that private sector associations make clear reference to the sections of the measure being commented on, and that responses are unambiguous, clearly articulated and based on fact. The consultation process is not designed to address complaints or grievances. Feedback of this nature should be submitted through the established complaints process.
20. In cases where the feedback proposes to change a policy position of the Authority or substantially amend any requirement of the draft measure, information to support the position of the association must be provided. The table below provides an example of the Authority's expectation with regard to feedback for the proposed measure.

Reference	Example of a Helpful Comment	Examples of Comments needing more Support
Rule 4.2 ²	<p>In Rule 4.2 the current text omits the fair value measurement of liabilities. Also, as defined it is not asymmetrical with the Market Price definition and thus scenarios exists that fall into neither category.</p> <p><u>Suggested wording:</u> <i>Hard-to-Value Securities means an asset <u>or liability</u> for which <u>there is no Market Price which is required to be measured at fair value pursuant to 5.2</u></i></p>	<ul style="list-style-type: none"> × This is not what is done in other jurisdictions. × I don't think we should do this. × CIMA is not considering the position of the experts.

21. All feedback submitted by private sector associations will be given due consideration, nevertheless, the decision to adopt any feedback provided into a proposed measure will be at the sole discretion of the Authority.

H. **Notice of Representations**

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

Rule on Deregistration of Private Trust Companies

23. The Authority must receive representations by 1700hrs on Friday, **September 18, 2020**. Representations received after this deadline may not be considered and will not form part of the collated written response provided to private sector associations.
24. Comments and representations must be addressed to:

The Managing Director
 Cayman Islands Monetary Authority
 P.O. Box 10052

² This example is not reflective of the content of the proposed measure.

SIX, Cricket Square
Grand Cayman KY1-1001
Cayman Islands
Tel: 345-949-7089
Fax: 345-946-5611
Email: consultation@cima.ky
and copied to bradshawnakelly@cima.ky

25. 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.



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