



PRIVATE SECTOR CONSULTATION
Rules and Statement of Guidance for
Nature, Accessibility, and Retention of
Records for Trust Service Providers and
Corporate Service Providers

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A. Introduction

1. Section 34(1)(a) of the Monetary Authority Act (2020 Revision) (as amended) (“MAA”) 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 MAA as follows:

When this Act 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” or “CIMA”) seeks consultation and comment from the private sector associations concerning the *Rule and Statement of Guidance for Nature, Accessibility, and Retention of Records for Trust Service Providers and Corporate Service Providers (Rules and Guidance)* (attached as **Appendix 2**).

B. Background

4. The Authority underwent its first-round international assessment from the Group of International Finance Supervisors (GIFCS) in May 2019. The *GIFCS Mutual Evaluation Report* (GIFCS MER), dated August 2020, noted a lack of legal enforceability in regard to SOGs. This issue was referenced throughout the report. The GIFCS MER provides that it would be beneficial if all guidance were made enforceable and that the

jurisdiction’s effectiveness would be further enhanced if the Statements of Guidance are solidified as enforceable means.

5. The Authority has identified the need to establish requirements for the treatment of records as specified in the *Standard on the Regulation of Trust and Corporate Service Providers* by GIFCS (GIFCS Standard).
6. For the most part, the existing *SOG: Nature, Accessibility and Retention of Records* issued in August 2017, sufficiently captures record-keeping best practices that are also applicable to TSP, CSP, and persons conducting the business of company management. However, the GIFCS MER consistently notes that the record keeping requirements are laid out in guidance only. Additionally, at the time of the GIFCS assessment, the Data Protection Act was not yet in force.

C. International Standards

7. *The International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – The FATF Recommendations* makes mention of the need for all requirements on financial institutions to be introduced either in law or enforceable means. FATF defines “enforceable means” as “regulations, guidelines, instructions or other documents or mechanisms that set out enforceable AML/CFT requirements in mandatory language with sanctions for non-compliance, and which are issued or approved by a competent authority.”
8. More specifically, the GIFCS Standard sets out the record keeping requirements. Additionally, GIFCS’s *Data Security and Data Protection in the context of TCSPs* issued in April 2017, sets out the regulatory practices desirable for the protection of client data in TCSPs and states that regulations should address TCSP’s standards of data protection. Where no data protection authority exists or there is no data protection legislation in place in a jurisdiction, the financial services regulator may assist by issuing measures which take the data protection principles into account.
9. The GIFCS Standard establishes principles for TCSPs. A summary is provided in **Table 1**.

Table 1: GIFCS Standard

G. Prudential
2. Maintenance of Adequate Accounting and other Records of a TCSP
2.1 The Regulator should require a TCSP to produce and retain financial records that accurately reflect its affairs. Such records must be available to the Regulator immediately upon request.
2.2 Regulators should implement rules wherein a TCSP should retain sufficient accounting and financial data with regard to any financial transaction in which it played a part, to ensure the preservation of an audit trail for a minimum period of five years.
2.3 Regulators should implement controls to require a TCSP to maintain accounting records in a manner that is accessible and promotes inspection by the Regulator.
3. Requirement to have Accounts Audited
3.9 The Regulatory framework should enable the Regulator to require copies of financial records, including audited financial statements of parent and ultimate parents entities, particularly where the TCSP is dependent on support from its parent or group, or otherwise has significant financial exposure to the parent or group.
H. Administration
1. Record Keeping Requirements
1.1 The Regulator should ensure that it has the statutory power to access the records of a TCSP, and to take copies of such records to undertake its regulatory functions.

1.2 The Regulator should require that TCSPs have in place robust record keeping policies and procedures that deliver effective information and document management systems The Regulator should require that a TCSP:
1.2.1. maintains all records so that they are accessible and up-to-date at all times as far as is reasonable;
1.2.2. arranges files and indexes all records so as to permit prompt access to any particular record;
1.2.3. records information in such a way as to enable a particular transaction to be identified at any time and traced through the accounting systems of the TCSP, in particular in such manner as to enable early identification of balances and of the particular items which make up those balances;
1.2.4. ensures any records it maintains in an electronic format are stored in such a way as to be and remain admissible in evidence before a relevant Court;
1.2.5. maintains adequate policies and procedures for the maintenance, security, privacy and preservation of records, working papers and documents of title belonging to the TCSP and/or its Clients or others so that they are admissible before a relevant Court and reasonably safeguarded against loss, unauthorised access, alteration or destruction;
1.2.6. maintains adequate records identifying relevant financial transactions following the closing of an account, the end of a transaction or the cessation of the business relationship for a minimum period of five years from the last of these events; or for as long as the law requires.
2. Accounting Requirements for Vehicles administered by TCSPs
2.1. Regulators should require that a TCSP with responsibility for maintaining accounting records of a Vehicle does so with sufficient particularity to show and explain the transactions and commitments (whether effected on its own behalf or on behalf of others).
5. Data Protection
5.1 The data protection principles framework for holding data about individuals varies slightly between jurisdictions, but the principles can be summarised as below. Personal data must be:
5.1.1 Used fairly and lawfully
5.1.2 Used for specific and lawful purposes, in a manner that is compatible with those purposes
5.1.3 Adequate, relevant and not excessive
5.1.4 Accurate and where necessary kept up to date
5.1.5 Kept for no longer than necessary
5.1.6 Used in accordance with the rights of individuals
5.1.7 Kept secure to avoid unauthorised or unlawful use, accidental loss, or damage
5.2 Regulators should require a TCSP to follow the above data protection principles and to:
5.2.1 Not transfer data to another jurisdiction unless that jurisdiction subscribes to the above principles or an agreement exists between the TCSP and transferee providing an equivalent level of protection
5.2.2 Document the capability and suitability of the proposed provider of outsourced services

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

10. The need to strengthen the framework regarding treatment of records requires the issuance of rules in order to create enforceability. The proposal is therefore to create Rules and Guidance for treatment of records basing the majority of the content off of existing measure and GIFCS recommendations. These rules will be directly connected to the obligations established in legislation and therefore directly tied to enforcement action available to the Authority.

11. In summary, the Rules and Guidance:
 - a) Establishes the expectations to the mandatory accessibility requirement for records;
 - b) Discusses the treatment of records overall as well as in accordance with other applicable acts such as the Data Protection Act;
 - c) Sets out examples of some of the main records expected to be kept while providing the mandatory minimum retention period expected; and
 - d) Sets out the mandatory requirements for maintenance of accounting records.

12. Section 6(1) of the MAA 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 in accordance with this [Act] and the regulatory [acts]."

13. Section 6(3) of the MAA provides that in performing its regulatory functions, the Authority shall, *inter alia*,
 - a) *endeavour to promote and enhance market confidence, consumer protection and the reputation of the Islands as a financial centre;*
 - ...
 - c) *recognise the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, from the point of view of 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 on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;*
 - 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.*

14. Therefore, the benefits of implementing the Rule and SOG are twofold – 1) the Authority will be able to adequately conduct its regulatory functions in this regard, and 2) a possible reduction of ambiguity to obligations to the measure.

E. Jurisdictional Comparison

15. A review of the regulatory framework for TSPs, CSPs, and persons conducting the business of company management in select jurisdictions was conducted and the results are presented in **Table II**. Many of the jurisdictions assessed require that relevant entities make available any record upon the request of the financial services regulator.

16. The Bahamas
 The Bahamas' *Supervisory and Regulatory Guidelines* differentiates within the document between guidance and requirements by using the words "may" or "must" respectively. The guidelines are enforceable. The *Minimum Physical Presence Requirements Guidelines* by the Central Bank of The Bahamas, specifies that for

records maintained outside The Bahamas, the Central Bank personnel must have direct access on an immediate and real-time basis.

The British Virgin Islands

17. The BVI has an enforceable framework in the *Regulatory Code* which contains regulatory requirements as well as explanatory notes. This document specifically recognises the demand by international standards to require specific matters to be included in law but also notes the practicality of changing legislation regularly.

Isle of Man

18. The Isle of Man, in the *Financial Services Rulebook*, specifies that records should be maintained in such a manner that they can be produced within 24 hours of demand. The *Guidelines on Expected Practice for Trust Service Providers* states that the Isle of Man FSA expects professional trustee to be able to produce specific records within a reasonable time. Records expected to be produced include original trust documents, minute book to record the decision of the trustee, copies of relevant correspondence, and details of settlor, beneficial objects and protector (including full CDD in accordance with AML legislation).

Jersey

19. The *Jersey Code of Practice for Trust Company Business* details record keeping practices for registered persons (persons registered to carry on trust company business) and the trust company business services that it is providing. Registered persons are expected to have appropriate record keeping in order to comply with the requirements for AML/CFT, make records available in English to the Financial Services Commission, have documented policies and procedures for record retention, and make appropriate arrangements for recordkeeping as part of their business cessation strategy should they cease to conduct trust company business. The Code of Practice also stipulates that the retention period as it pertains to other laws including data protection, may be relevant for business records.

Guernsey

20. Guernsey Financial Services Commission’s *Fiduciary Rules and Guidance, 2020* establishes that a licensed fiduciary must ensure adequate records are kept. For trust service providers such records includes details of the trust such as tax records, minutes of meetings held, accounting records, and material communications with clients; for corporate service providers, records must be maintained of all client corporate entities including details of their company registers, proceedings of company meetings, jurisdictions of incorporation, and material communications with clients and other stakeholders. Records must be arranged to ensure prompt access and prompt reproduction into English, must have adequate policies and procedures for data security, and must be kept for a minimum period of six years or for a period required under an applicable law. All policies and procedures must conform to the Data Protection (Bailiwick of Guernsey) Law, 2017.

Table II: Summary of Jurisdictional Comparison

Country	Type of Document	Enforceable?	GIFCS Member?
The Bahamas	Supervisory and Regulatory Guidelines ¹	Yes	Yes

¹ [Central Bank of Bahamas Guidelines](#)

Singapore	Guidelines 1 & 2 and FAQ's	No	No
Jersey	Code of Practice For Trust Company Business ²	Yes	Yes
Cook Islands	Guidance Note ³	No	Yes
The British Virgin Islands	Regulatory Code ⁴	Yes	Yes
Isle of Man	Handbook ⁵	No	Yes
Guernsey	The Fiduciary Rules and Guidance, 2020 ⁶	Yes	Yes

F. **Cost and Benefit Analysis**

21. The Authority has assessed the implications of issuing the Rules and Guidance and some of the relevant costs and benefits of this proposal are presented in **Table III**.

Table III: Estimated Costs and Benefits of Implementing the Rules and Guidance

	Costs	Benefits
CIMA	<ol style="list-style-type: none"> 1. The Authority will incur the usual administrative costs associated with publication of the revised measure and amending internal supervisory manuals. 2. The major costs to CIMA are in line with the costs of pursuing its mandate with the ongoing monitoring and reviewing of compliance of supervised entities; and pursuing supervisory responses including enforcement action where breaches are identified. 3. Offsite and onsite procedures may have to be refined to be aligned with identifying and 	<ol style="list-style-type: none"> 1. The Authority can expect to see improved compliance by supervised entities with the measure, given the role enforceable rules can be expected to play in dissuading non-compliance. 2. CIMA can now clearly articulate its expectations and directly link these to applicable legislation and sanctions/ enforcement actions. 3. Evidence for enforcement action will be based on a clear expectation that is designated a Rule. 4. Increased adoption of record keeping practices thereby

² <https://www.jerseyfsc.org/media/3102/cop-trust-company-business-code-of-practice.pdf>

³ Financial Supervisory Commission Cook Islands

⁴ [British Virgin Islands Regulatory Code](#)

⁵ Webpage that has links to legislation and specific guidance

⁶ <https://www.gfsc.gg/sites/default/files/The%20Fiduciary%20Rules%20and%20Guidance%202020.pdf>

	Costs	Benefits
	taking action in response to breaches of rules.	decreasing the enforcement costs for CIMA.
<i>Cayman Islands</i>	No notable costs observed.	<ol style="list-style-type: none"> 1. The Cayman Islands will stand to benefit from improved reputation as ensuring that the treatment of records are clearly mandated will prove the jurisdiction's commitment to a strong regulatory framework for its financial sector. This will inevitably have a significant and positive impact on confidence in the Cayman Islands as a strong well-regulated financial centre. 2. The jurisdiction can expect to receive improved results in international assessments with the greater clarity surrounding the enforceability of the requirements established in the measure.
<i>TSPs, CSPs, and persons conducting the business of company management</i>	<ol style="list-style-type: none"> 1. Supervised entities may incur additional costs related to the implementation of the requirements of the new measure. However, most obligations in the measure are either currently enshrined in the legislation and regulations or are already in the industry-wide Rule and SOG for Nature, Accessibility, and Retention of Records, and therefore minimal new requirements are being imposed. 	<ol style="list-style-type: none"> 1. TSPs, CSPs, and persons conducting the business of company management will benefit from greater clarity and lessened ambiguity surrounding their obligations as it relates to their treatment of records requirements.
<i>Summary</i>	Consequent to the above, it is determined that the benefits outweigh the costs and the issuance of the Rules and Guidance for Nature, Accessibility, and Retention of Records, should be pursued by the Authority.	

G. Consultation Feedback and Comments

22. 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.

23. 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.
24. 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 ⁷	<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 or liability 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.

25. 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

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

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

27. The Authority must receive representations by 1700hrs on **March 26 2021**. Representations received after this deadline may not be considered and will not form part of the collated written response provided to private sector associations.
28. Comments and representations must be addressed to:

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

⁷ 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 ShannonFrancis@cima.ky

29. 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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