



CAYMAN ISLANDS MONETARY AUTHORITY

February 2018

Procedure for Appointing Controllers and Advisors; and Auditors for Anti-Money Laundering Audits and Assessing Costs

1. Statement of Objectives

- 1.1 To set out and describe the criteria the Authority will adopt when applying the following enforcement actions:
 - a) Appointing controllers under the regulatory laws;
 - b) Appointing advisors under the regulatory laws; and
 - c) Requiring entities to appoint auditors to conduct anti-money laundering audits to assess compliance with the Anti-Money Laundering Regulations ("AML Audits").
- 1.2 To set out and describe the criteria the Authority will adopt when applying the following supervisory actions:
 - a) Directing or requiring entities to appoint advisors under the regulatory laws; or
 - b) Requiring entities to appoint auditors to conduct an AML Audit.
- 1.3 To set out and describe the criteria the Authority will adopt when assessing costs in respect of the above enforcement and supervisory actions.

2 Introduction

- 2.1 The Authority has powers under the regulatory laws to appoint a person to assume control of the affairs of a regulated entity (licensee or registered person, as the case may be), and to appoint a person to advise a regulated entity on the proper conduct of that entity's affairs.
- 2.2 The Authority may further require the appointment of an auditor to conduct an AML audit, either as an enforcement action or as a supervisory or regulatory action.
- 2.3 Certain regulatory laws also enable the Authority to appoint, or to direct or require a regulated entity to appoint an advisor as a supervisory or regulatory action.

The Authority developed these procedures to provide a mechanism to provide transparency in the appointment and reporting obligations for those appointed persons.

- 2.4 The person appointed as a Controller, Advisor or Auditor is entitled to be paid for services performed in the carrying out of the role of Controller, Advisor or Auditor, including expenses incurred for that purpose.
- 2.5 While there are no express legal provisions for the Authority to approve the Controller's, Advisor's or Auditor's fees and costs, the Authority will do so in keeping with the guidance set out in this procedure. This approach is consistent with the Authority's principal functions to regulate and supervise financial business under the Monetary Authority Law and the regulatory laws and its



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duty to promote and enhance market confidence, investor protection and the reputation of the Cayman Islands as a financial centre.

3 Appointment of Controller or Advisor by the Authority as an Enforcement Action

Preliminary Steps

- 3.1 Prior to selecting a person or persons to act as Controller or Advisor, the Authority should attempt to collate the following information, at a minimum, which the potential Controller or Advisor will be interested to receive in considering the appointment:
 - 3.1.1 The type of license or registration and business the licensee or registrant is involved in;
 - 3.1.2 The most current financial position and the liquid assets available, particularly locally, to pay the expenses of the Controller or Advisor;
 - 3.1.3 The jurisdiction(s) where the licensee or registrant operates;
 - 3.1.4 The names and contact details of the directors and shareholders, and whether they are co-operative;
 - 3.1.5 The names and contact details of the principal service providers and whether they are co-operative;
 - 3.1.6 The location of the licensee's or registrant's books and records, and whether they are complete and up-to-date;
 - 3.1.7 Details of the regulatory concerns;
 - 3.1.8 Whether the Authority requires a particular concern or concerns to be addressed in the initial report; and
 - 3.1.9 A proposed timetable for appointment and reporting requirements.
- 3.2 When determining which person or persons to appoint as Controller or Advisor, the Authority will consider the following:
 - 3.2.1 All relevant parties involved with the licensee or registrant (including the directors, shareholders, auditors, managers, advisors and other service providers that may carry obligations for the licensee) for the purpose of determining which persons may have a conflict in being appointed.
 - 3.2.2 Any person with a direct potential conflict of interest or appearance of a conflict should not be selected for appointment, unless the Authority is persuaded that the potential conflict will not prejudice the independence of that person in performing their duties as Controller or Advisor.



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3.2.3 Other factors, including, but not limited to, expertise in the respective industry, past relationship with the Authority, any previous appointments by the Authority, presence in any foreign jurisdictions where the licensee operates, and available resources to perform the

Controller or Advisor function and prepare the report, should also be considered when selecting an appropriate person or persons to act as Controller or Advisor.

3.3 As soon as practically possible, and prior to recommending the appointment of a person or persons as Controller or Advisor, the Authority should perform the following:

3.3.1 Send, on a confidential basis, the list of relevant parties to the potential Controller or Advisor in order that they may confirm formally that they do not have an actual or potential conflict of interest. If an actual or potential conflict should arise, discussions with the said person may be ceased and efforts may be taken to determine another candidate for the role.

3.3.2 Upon confirmation that an actual or potential conflict of interest does not exist, steps should be taken to arrange a meeting with the potential Controller or Advisor to discuss the regulatory issues at the licensee; the expectations/ role of the Controller or Advisor, including reporting requirements; and the steps that should be taken upon being appointed as Controller or Advisor.

3.4 The regulatory laws require that the Controller provide a report within 90 days of the date of appointment or within such time as may be required by the Authority. The Authority will determine whether it requires any interim reports to be provided. In determining the deadline for an interim report, the Authority may consider the following:

3.4.1 The extent of concern regarding the insolvency or unlawfulness of the licensee's or registrant's business;

3.4.2 The extent of concern that the assets of the licensee or registrant may be at risk of dissipation;

3.4.3 Access to persons with information and books and records, and the extent of such;

3.4.4 The nature and extent of investigation required;

3.4.5 Number of jurisdictions involved;

3.4.6 The potential level of contagion and systemic risks posed; and

3.4.7 Any public interest considerations.



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4 Appointment of Advisor or Auditor for AML Audit by Regulated Entity as an Enforcement Action

Preliminary Steps

- 4.1 Where the Authority requires that a regulated entity appoints a person to undertake an AML Audit, the Authority may identify the person that the regulated entity will appoint. In those circumstances, the Authority will follow the procedure outlined in the section titled "***Appointment of Controller or Advisor by the Authority as an Enforcement Action***".
- 4.2 Where the Authority requires that a regulated entity appoints a person to undertake an AML Audit, the Authority will require that the regulated entity receive the Authority's approval before finalising the appointment.
- 4.3 The Authority will not approve the appointment of a person where an existing relationship, or a material previous relationship, exists between a proposed appointee and the regulated entity that presents a conflict of interest or the appearance of a conflict.
- 4.4 The Authority must approve the scope of the appointee's role and the timelines of any proposed remedial action. Where the proposed remedial action will result in material changes to the regulated entity's governance structure or operations, the regulated entity must seek the Authority's prior approval for undertaking the remedial action.

5 Appointment of Advisor or Auditor for AML Audit by Regulated Entity as a Regulatory or Supervisory Action

Preliminary Steps

- 5.1 Where the Authority requires that a regulated entity appoints a person to undertake an AML Audit, the Authority will require that the regulated entity receive the Authority's approval before finalising the appointment.
- 5.2 The Authority will not approve the appointment of an Advisor or Auditor where an existing relationship, or a material previous relationship, exists between a proposed appointee and the regulated entity that presents a conflict of interest or the appearance of a conflict.
- 5.3 The Authority must approve the scope of the appointee's role and the timelines of any proposed remedial action. Where the proposed remedial action will result in material changes to the regulated entity's governance structure or operations, the regulated entity must seek the Authority's prior approval for undertaking the remedial action.

6 Communication with the Supervisory Divisions



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- 6.1 During the period of controllership or advisorship, the Authority and the Controller or Advisor will communicate regarding the Controller's or Advisor's findings and the actions taken. The primary contact at the Authority is the Compliance Division, however, in some instances, it may be appropriate to communicate directly with the supervisory division.
- 6.2 Where the Controller or Advisor is communicating with the Authority to rectify regulatory problems with a view to having the licensee or registrant comply with the regulatory laws or the Anti-Money Laundering Regulations, it may be appropriate that the Controller or Advisor communicate directly with the supervisory division, in order that it may satisfy itself that the proposals being put forward would meet the relevant requirements.
- 6.3 All discussions between the Authority and the Controller or Advisor shall be documented.

7 Reports

- 7.1 Controllers should send the interim reports (where applicable), final report, and any follow up reports to the Compliance Division, relevant supervisory division and the Legal Division.
- 7.2 Advisors appointed by the Authority should send all required reports to the Compliance Division, supervisory division and the Legal Division; and, once approved by the Authority, to the regulated entity.
- 7.3 Advisors appointed by the regulated entity, and auditors conducting AML Audits, must send any reports to the Compliance Division, Supervisory Division and Legal Division at the same time that the report is issued to the regulated entity.

8 Meetings

- 8.1 The Authority will usually arrange a meeting with the Controller or Advisor appointed by the Authority after receipt of his/her report to discuss the report and the recommendation(s).
- 8.2 The Authority will usually arrange a meeting with the regulated entity after receiving and reviewing the report from an Advisor appointed by a registrant or an auditor conducting an AML Audit.

9 Implementing the Report of the Advisor or Auditor

- 9.1 The report from an Advisor or auditor will contain advice or recommendations on the steps required or the systems to be implemented to put the licensee or registrant into compliance. The Authority must be given sufficient opportunity to review and approve the entire report, and provide feedback, before any steps are taken by the licensee or registrant on the implementation of the report. This includes any proposals on restructuring or reorganizing of the



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licensee/registrant or its group. The Authority is also entitled to approve timelines, including shortening or increasing timelines.

9.2 The Authority must receive regular progress reports from the Advisor or auditor. The Authority will set out reporting timeframes, and the period over which reports must be made.

10 Assessing Costs

10.1 The Authority will assess and approve costs only where information is provided in a form consistent with this procedure. In the event of a significant dispute about the extent of costs claimed, the parties may submit the costs to an independent expert agreed by both parties. Where an independent expert's opinion is sought and received, pursuant to agreement between the parties, it is expected that the expert's opinion would be binding on all parties.

10.2 A Controller may seek the court's direction on costs in certain limited contentious matters. Where a Controller has cause to seek the court's direction, the Authority will not conduct a cost assessment.

The Procedure

General Principles for the Assessment of Costs – Controller or Advisor Appointed by the Authority

10.3 The overriding principle is that a person appointed by the Authority should receive costs that are reasonably incurred by him/her in executing the terms of the appointment in an economical, expeditious and proper manner;

10.4 A letter of arrangement setting out the terms of appointment and conditions should be provided in writing by the Authority, and the person to be appointed should confirm in writing his willingness to act in accordance with these terms and conditions before he is appointed. A letter setting out the terms of appointment should include the provisions included in the example set out in Schedule 1;

10.5 The appointed person will submit his costs and disbursements to the Authority for approval in accordance with the procedures set out below;

10.6 Reasonable travelling and hotel expenses incurred shall be recoverable. Time spent travelling should be charged at one half, unless time is spent working on the engagement while travelling. In cases where travelling to a foreign jurisdiction, the Authority will consider whether the work could be performed as effectively by engaging someone from that jurisdiction at a lower cost. If this is the case, such costs in whole or in part may not be recoverable.

10.7 Investigative and other work done by the Controller or Advisor may not be recoverable if it is outside the scope of the letter of appointment and terms of reference.



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11 Structure of a Bill of Costs

- 11.1 A bill of costs submitted for approval by the Authority should distinguish between the appointed persons' fees and disbursements;
- 11.2 A bill of costs may be drawn up in CI\$ or US\$ (referred to as "the currency of the bill"). Costs incurred in any other currency must be converted into the currency of the bill at the exchange rate ruling on the date of the bill. The CI\$/US\$ exchange ratio is fixed at 0.82;
- 11.3 The bill should include an overview or summary of the principal activities undertaken during the course of the appointment period, sufficient to enable the Authority to gain a proper understanding of the work completed, without necessarily having to refer to the letter of appointment, reports or other documentation or correspondence;
- 11.4 A summary of total hours worked and total costs for each staff member should be provided. Time records must be recorded to a minimum of 1/10th of an hour;
- 11.5 In addition, the work done and disbursements incurred should be itemized;
- 11.6 The staff employed should be identified sufficiently to enable the Authority to determine the appropriate hourly rate(s) for work performed by each individual;
- 11.7 Each item of work should be described. The number of hours worked on each item by each staff member should be stated, together with applicable hourly rates;
- 11.8 The bill should be completed in a manner consistent with the *Template on Assessing Controller Costs*.
- 11.9 The bill of costs must contain a declaration signed by the appointed person to the effect that:
 - a) The bill is accurate and complete; and
 - b) The amount sought in the bill does not exceed the appointed person's incurred costs.
- 11.10 Wherever possible, copies of the bills should be submitted to the Authority in a manner approved by the Authority.

12 Procedure for Obtaining Approval from the Authority

- 12.1 On a review of the bill of costs, the Authority will make appropriate inquiries in order to satisfy itself that the cost claims are reasonable;



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- 12.2 The Authority will assess each item in the bill of costs and determine what amount, if any, shall be allowed in respect of it;
- 12.3 To the extent that the Authority requires further information, clarification, or disagrees with the bill of costs, it shall first write to the appointed person and request their comments;
- 12.4 Where there is still disagreement as to the bill of costs, the Authority and appointed person will use their best efforts to resolve the issues, including, if appropriate, by convening meetings;
- 12.5 The Authority may employ the services of a person with expertise or experience in the Cayman Islands or elsewhere to assist in reviewing and assessing the bill of costs and disbursements. The costs of employing an expert will be at the expense of the regulated entity;
- 12.6 The Authority will make its best efforts to consider a bill of costs as soon as possible. In the event that there is a significant dispute about the extent of costs claimed by the appointed person, the parties may submit the costs to an independent expert agreed by both parties. Where an independent expert's opinion is sought and received, pursuant to agreement between the parties, it is expected that the expert's opinion would be binding on all parties.



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Schedule 1
Example Form of Controller Appointment Letter

[Applicable Law]

APPOINTMENT OF CONTROLLER

Pursuant to Section [xx] of
the [applicable law]

1. The Cayman Islands Monetary Authority pursuant to the powers conferred by section [xx] of the [applicable law] and at the expense of ---- (“the Company”),

NOW HEREBY APPOINTS ----- and ---- of the firm of ----, to assume control of the affairs of the Company and who shall, have all the powers necessary to administer the affairs of the licensee including power to terminate the [type of business] business of the Company.

2. [Name of Controllers] are REQUIRED to assess whether any applications should be made to the Grand Court of the Cayman Islands [insert relevant section of the law] of the Company.
3. [Name of Controllers] are REQUIRED to prepare and furnish a report in accordance with Section [xx] of the [applicable law] to the Cayman Islands Monetary Authority of the affairs of the Company and of their recommendations thereon. This report is to be furnished as soon as possible, but no later than [xx] months from the date of this appointment. Subject to there being no issues or applications that need to be made, an interim report shall be furnished on or before [Date].

[Dated this day of ----].

Cindy Scotland
Managing Director
Cayman Islands Monetary Authority



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Schedule 2

Appointment of Advisor

Required documents:

1. Terms of Reference to include:
 - a. Scope and Objectives
 - b. Professional Fees
 - c. Deliverables
 - d. Reporting Requirements

2. Authorisation to Act under relevant section of the regulatory law