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Statement of Guidance Nature, Accessibility and Retention of Records

1. Statement of Objectives

- 1.1. To ensure that persons and entities regulated or registered under the Regulatory Laws as defined in the Monetary Authority Law (2016 Revision) ("MAL") ("Relevant Entities") maintain their records in a manner that promotes accessibility, retention and appropriate security.
- 1.2. The Cayman Islands Monetary Authority (the "Authority") recognises that the arrangements for record keeping will vary according to the manner in which the business of the relevant entity 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 relevant entities. The Anti-Money Laundering Regulations 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 laws and regulations.
- 1.3. This Guidance is not intended to be prescriptive or exhaustive; rather this Guidance sets out the Authority's minimum expectations of a relevant entity's record keeping arrangements.
- 1.4. Record keeping requirements apply to all relevant persons and entities.

2. Statutory Authority

- 2.1. Section 34 of the MAL 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 laws may apply;*
- 2.2. This document establishes the Statement of Guidance on Nature, Accessibility and Retention of Records. It should be read in conjunction with the regulatory



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instruments issued by the Authority from time to time, particularly the Statement of Guidance on Outsourcing, the Anti-Money Laundering Regulations (as amended), and the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing.

3. Scope of Application

3.1. This Guidance applies to:

- a) Banks and trust companies licensed or registered under the Banks and Trust Companies Law;
- b) Private Trust Companies registered under the Private Trust Companies Regulations;
- c) Company Managers and corporate services providers licensed under the Companies Management Law;
- d) Mutual funds licensed or registered and mutual fund administrators licensed under the Mutual Funds Law;
- e) Securities investment businesses licensed and excluded persons registered under the Securities Investment Business Law;
- f) Insurance companies, insurance brokers, insurance managers, and insurance agents licensed under the Insurance Law;
- g) Building societies regulated under the Building Societies Law;
- h) Credit unions regulated under the Cooperative Societies Law;
- i) Development banks regulated under the Development Bank Law;
- j) Money services businesses licensed under the Money Services Law; and
- k) Directors registered or licensed under the Directors Registration and Licensing Law.

3.2. The Authority acknowledges that relevant entities 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 Statement of Guidance and that are appropriate for the particular operations of that legal entity. The relevant entity must assess whether this 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.

3.3. The Guidance does not codify or amend any existing law. Where the Guidance is incompatible with existing law, the law takes precedence and prevails.

3.4. The Authority will consider the contents of this Guidance in its supervisory processes, including onsite inspection.



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4. General

- 4.1. A "record" has the same meaning as "document" as defined in the MAL and "electronic record" has the same meaning as defined in the Electronic Transactions Law (as amended). Original records include records originating electronically or electronic copies of paper-based records. All records must be legible and easily accessible.
- 4.2. Accessible records are records that can be provided by the relevant entity to the Authority within a reasonably short timeframe. The Authority expects that most records should be provided within 1-3 business days from the time they are requested 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.
- 4.3. A relevant entity should keep records of books of accounts and other financial affairs as well as other records. Some examples include:
 - a) Corporate accounting records;
 - b) Organizational records;
 - c) Employee and other administrative records;
 - d) Risk management policies;
 - e) Corporate records such as incorporation documents and shareholders and directors meeting minutes and board resolutions;
 - 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) Annual returns due to the Authority; and
 - j) Any other records as required by relevant regulatory or other laws for the period specified by the regulatory or other laws.Record keeping should be sufficient to enable the Authority to monitor compliance with regulatory and anti-money laundering and countering terrorism financing obligations.
- 4.4. Relevant entities 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.
- 4.5. A relevant entity 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.



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- 4.6. Records should 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.
- 4.7. A relevant entity 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 relevant entity.
- 4.8. Where it is impractical for a relevant entity to maintain its own records and records are retained by a third party, the relevant entity maintains ultimate responsibility for record retention and ensuring records can be retrieved in a timely fashion. The relevant entity remains responsible for compliance with all record-keeping requirements and for accessibility of records by the Authority.

5. Records Retention Timeframe

- 5.1. Relevant entities should 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. Original format includes electronic copies of paper-based records as stipulated in section 4.1.
- 5.2. This statement is without prejudice to other legal obligations the relevant entity 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 life-time of the trust and for further periods thereafter.

6. Elements of Records Management

- 6.1. A relevant entity must maintain adequate procedures for the availability, maintenance, security, privacy and preservation of records, working papers and documents of title belonging to the relevant entity, 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.
- 6.2. 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 by the relevant entity.



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- 6.3. Where a relevant entity maintains records belonging to another relevant entity who is a client, it should ensure that client records are treated in accordance with the practices outlined in this Guidance.
- 6.4. A relevant entity should review its record keeping arrangements periodically including where third parties are involved, and make adjustments if necessary.
- 6.5. The Authority understands that as a normal course of doing business, there will be instances where relevant entities merge, transfer, or discontinue activities. Nonetheless, the Authority expects that relevant entities have a plan in place for the treatment of records once an entity ceases to do business. The Authority expects to be informed of where and how records may be accessed once a relevant entity ceases to carry on business. Notwithstanding cessation of business, record-keeping requirements should be met for the period required by the regulatory or other laws.

7. Keeping of Accounting Records

- 7.1. A relevant entity must record information likely to be required by the Authority in such a way as to enable a particular transaction to be identified at any time and traced through the accounting systems of the relevant entity, in particular in such manner as to enable early identification of balances and of the particular items which make up those balances.
- 7.2. A relevant entity must keep proper accounting records in such a manner that they are sufficient to show and explain the relevant entity's 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 of the relevant entity for a minimum of five years of operation or for a time period as required under the Anti-Money Laundering Regulations;
 - b) demonstrate whether or not the relevant entity is or was at that time complying with its financial resources requirement, where applicable (e.g capital requirements); and
 - c) enable the relevant entity 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.
- 7.3. A relevant entity should ensure that its accounting records shall as a minimum



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contain:

- a) a record of all assets and liabilities of the relevant entity including any commitments or contingent liabilities;
- b) a record of all income and expenditure of the relevant entity explaining its nature;
- c) a record of all investments or documents of title in the possession or control of the relevant entity 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 by the relevant entity, 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 by the relevant entity, distinguishing those which are made by the relevant entity 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 relevant entity.

8. Maintenance of Records Outside of the Cayman Islands

- 8.1. In most instances, relevant entities are not restricted from holding certain records outside of the Cayman Islands. In addition, the Authority may give approval, where appropriate, to relevant entities to permit the maintenance of records outside the Cayman Islands.
- 8.2. Relevant entities 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 Law.
- 8.3. When records are held outside of the Cayman Islands, relevant entities must ensure that the Authority will have access to records at all reasonable times in accordance with the relevant laws and within the time period stipulated in 4.2.



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- 8.4. Where a relevant entity has no physical presence in the Cayman Islands, there should be no restrictions to the access of records by the Authority regarding the entity or its clients.
- 8.5. Where records are maintained outside the Cayman Islands through outsourcing, storage, or other arrangements, the relevant entity remains ultimately responsible for record keeping requirements and accessibility to records by the Authority.
- 8.6. A relevant entity 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 relevant entity maintain the same records within the Cayman Islands.

9. Electronic Records

- 9.1. It is expected that relevant entities 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.
- 9.2. 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.
- 9.3. The Authority expects that relevant entities use caution to prevent the premature destruction of paper-based records which have been converted to electronic records. A relevant entity 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.
- 9.4. The conversion of any paper-based record to an electronic record should not hinder the availability of such records to the Authority. The use of technology to handle records does not absolve the relevant entity of any regulatory or legal obligations for record-keeping.
- 9.5. The Authority expects that relevant entities will comply with the Electronic Transactions Law (as amended).