



**AUGUST 2018**

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**Statement of Guidance**

**Recruitment and Selection Standards for Trust and Corporate Service Providers**

**1. Statement of Objectives**

- 1.1 This Statement of Guidance ("Guidance") is intended to provide guidance to Trust and Corporate Service Providers relating to the recruitment, selection and competence of employees.
- 1.2 This Guidance also aims to set out the Cayman Islands Monetary Authority's ("Authority") expectations for continued professional development and provide guidance as to the legitimate and acceptable mediums of ongoing training.
- 1.3 This Guidance is not intended to be prescriptive or exhaustive; rather this Guidance sets out the Authority's minimum expectations relating to the recruitment, selection, competence and training processes of Licensees. The scale and nature of the business will also impact the application of the minimum standards as set out in the Guidance.

**2. Statutory Authority**

- 2.1 Section 34 of the Monetary Authority Law provides that the Authority may issue rules:
  - (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 Guidance on recruitment, selection and competence for Trust and Corporate Services Providers and should be read in conjunction with the following measures:
  - a. Regulatory Policy for Assessing Fitness and Propriety,
  - b. Regulatory Procedure for Assessing Fitness and Propriety,
  - c. Statement of Guidance on Corporate Governance, and
  - d. Statement of Guidance on Nature, Accessibility and Retention of Records.

### 3. Scope of Application

- 3.1 This Guidance applies to:
- a. Trust Companies licensed or registered under the Banks and Trust Companies Law;
  - b. Private Trust Companies registered under the Private Trust Companies Regulations; and
  - c. Company Managers and Corporate Services Providers licensed under the Companies Management Law ("CML").
- 3.2 The Authority will assess Licensees' compliance with this Guidance in a proportionate manner relative to their nature, scale, and complexity.

### 4. Definitions

- 4.1 For the purpose of this Guidance, the following definitions are provided:
- a. "**Companies Management Licensee**" – refers to a Licensee holding a licence under section 5(2)(b) of the CML.
  - b. "**Competence**" - relates to the level of a person's professional or formal qualifications, knowledge, skills and pertinent experience. Competence also includes the appropriateness of a person's level of commitment to perform his/her role and to maintain and enhance knowledge and skills through training and continued professional development.
  - c. "**Continued Professional Development ("CPD")**" - encompasses a wide range of company-developed ongoing training regimes and external non-degree bearing training and development courses offered to professionals with a view to maintain and/or enhance their knowledge and skills.
  - d. "**Continued Professional Development Policy ("CPD Policy")**" – refers to the documented policy developed by a regulated entity which outlines its expectations for training and continued professional development of its employees.
  - e. "**Employees**" – includes directors, partners and indirect employees such as temporary staff as well as general employees.
  - f. "**Licensees**" – refer to Companies Management Licensees, Corporate Services Licensees, Trust Licensees and Restricted Trust Licensees and registered Private Trust Companies.

### 5. Recruitment of Employees – Trust and Corporate Service Providers

#### 5.1 Recruitment Stage

- 5.1.1. Licensees should establish and maintain appropriate recruitment policies and procedures that have been reviewed and approved by senior management and the board of directors.
- 5.1.2. Recruitment policies and procedures should appropriately capture (1) the licensee's overarching and fundamental principles of recruitment and selection, (2) establish the licensee's commitment to fair and transparent recruitment processes and (3) include a methodology for assessing the fitness and propriety of candidates offered contracts of employment.
- 5.1.3. Recruitment policies and procedures should be periodically reviewed and updated to ensure that they continue to align with business and staffing realities.
- 5.1.4. Licensees should ensure that appropriate job descriptions are in place for all advertised roles. These job descriptions should provide applicants with a clear understanding of the role; purpose, accountabilities and responsibilities, along with the requirements, knowledge, skills and abilities to be successful in the role.
- 5.1.5. Licensees should ensure that candidates offered employment contracts are well suited to perform the role for which they are hired. The candidate's skills, experience and qualifications should meet or exceed the requirements of the role's job description. Licensees should be able to demonstrate that they have considered how applicants' experience, qualification, knowledge and skills meet the requirements for the role and that they have taken reasonable steps to obtain sufficient information to verify the person's relevant experience, qualifications and training before on boarding the applicant.
- 5.1.6. Licensees should also be able to demonstrate that they have assessed and verified applicants' references, membership in professional bodies (if applicable), criminal history, regulatory censure, sanctions, legal proceedings and any other formal censure, discipline or public criticism at the stage of recruitment.
- 5.1.7. Licensee's recruitment and selection processes should be fair, transparent and in line with the licensee's recruitment and selection policies and procedures.

## 5.2 **Post-Recruitment**

- 5.2.1. Licensees should ensure that the responsibilities and authority of each employee is clearly documented and communicated and is appropriate to his or her qualifications and experience.
- 5.2.2. To ensure employees remain competent and able to effectively carry out their role and responsibilities, licensees should review the competence, qualifications and skills of their employees on an ongoing basis. Additionally, licensees should also consider changes in employee characteristics over time e.g. avoiding taking holidays etc.

- 5.2.3. Reviews should take into consideration any additional skill or qualification needs of employees who have either entered new roles, or where the roles have changed, or have expanded in scope. Reviews should also take into account any changes in the nature, size and complexity of the overall business' operations.
- 5.2.4. Licensees should have effective management and systems to ensure that employees are appropriately supervised.
- 5.2.5. Policies and procedures should be in place that clearly outline reporting relationships and escalation processes. These policies and procedures should be well documented and communicated to staff.

## **6. Directorship Services Obligations**

- 6.1. Where a Companies Management Licensee is acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of director or alternate director of a company, the Companies Management Licensee should ensure the director or alternate director understands his or her duty to:
  - a. act openly, honestly and in good faith at all times and exercise independent judgement, always acting in the best interests of the client company.
  - b. carefully consider all decisions and understand potential negative implications for the client company, its shareholders or its customers.
  - c. maintain a thorough knowledge and understanding of the client company's business and update his/her knowledge periodically, consistent with changes in the industry, regulatory landscape or business of the client company.
  - d. satisfy himself or herself that appropriate and timely course of action is being taken to address any concerns they raise.
  - e. satisfy himself or herself that the client, its governing body, its service providers and advisors are acting in accordance with the client's constitutional documents and any other documents directing the management and operation of the client and/or its advisors or service providers.

## **7. Ongoing Training and Continuing Professional Development**

- 7.1. Licensees should have a documented policy which sets out ongoing training and CPD requirements for employees. Licensees should give adequate consideration to the scope of their business activities as well as the prevailing regulatory framework and market when developing their CPD Policy.
- 7.2. A licensee's CPD Policy should be reviewed periodically to ensure that the CPD Policy continues to meet the training needs of employees.
- 7.3. Employees including senior personnel and persons providing directorships should receive the training necessary for their roles at least annually. Training programmes should be in line with the licensee's CPD Policy.

- 7.4. CPD Policies should take into consideration any additional training needs of employees whose roles have changed or expanded in scope, or who have entered new roles.
- 7.5. Licensees and persons providing directorships may rely upon both internal training resources as well as appropriate external sources in developing a training and CPD regime. Licensees should satisfy themselves on the quality of the trainer, training materials and the standard of the training programs, when selecting CPD activities and ensure that the contents of such courses are appropriately structured and beneficial to persons providing directorships and the performance of their employees.
- 7.6. Licensees should ensure that employees comply with any CPD requirements of professional bodies associated with maintaining their membership. As part of their CPD Policy, Licensees may give credit to a person's professional development earned in meeting their CPD obligations of their membership towards meeting the minimum number of training hours specified in the CPD Policy.

## **8. Activities Relevant for Training and Continuing Professional Development**

- 8.1. CPD activities should be timely and relevant to the functions being performed.
- 8.2. CPD activities may include a varied mix of the following:
  - a. Training courses and activities provided by the regulated entity,
  - b. Industry Workshops,
  - c. Lectures and Exam Training,
  - d. Conferences and Seminars,
  - e. University Courses,
  - f. Certification Courses,
  - g. Distance Learning which requires active participation,
  - h. Self-study with Independent Assessments, and
  - i. Publication of Research Papers, Journal Articles.
- 8.2.1. Relevant CPD topics for employees should include (commensurate with the employee's role and responsibilities), amongst other topics relevant to the regulated entity's specific business operations:
  - a. Enterprise-wide Risk Management,
  - b. Anti-money Laundering and Countering Terrorist Financing Risk,
  - c. Other Relevant Risks e.g. Operational Risk, Credit Risk, Market Risk, Liquidity Risk, etc.,
  - d. Applicable Compliance, Legislative and Regulatory Standards,
  - e. Business Conduct and Ethical Standards,
  - f. New Financial Products in the Industry and the Associated Risks,
  - g. Management Systems,
  - h. General Management and Governance, and
  - i. Financial Reporting and Quantitative Analysis.

## **9. Record Keeping**

- 9.1. Licensees should keep the appropriate records related to their recruitment processes. Records should include at minimum:
  - a. Records relating to hiring decisions including decisions to refuse or reject an applicant,
  - b. Records relating to complaints about the hiring process or appeals to any decisions taken to transfer, promote, demote etc.
  - c. Advertisements or notices to the public or employees about openings, promotions, and/or training opportunities,
  - d. Job descriptions for existing and advertised positions,
  - e. Job applications, resumes, interview notes and records,
  - f. Records relating to fitness and propriety checks
  - g. Dates hired, promoted, demoted, transferred etc.
- 9.2. Licensees should also keep proper records of CPD activities including the details of the training conducted and the attendance records for persons who have completed the training.
- 9.3. Records should demonstrate how the training relates to and supports persons remaining competent in their role.
- 9.4. As best practice, Licensees should encourage employees to keep proper records of their own CPD activities including:
  - i. Name of course attended,
  - ii. Topic or subject matter,
  - iii. Date of attendance, and
  - iv. Number of hours.
- 9.5. All records should be kept in accordance with the requirements outlined in Section 5 of the Statement of Guidance on the Nature, Accessibility and Retention of Records.