



RULE AND STATEMENT OF GUIDANCE

Market Conduct for Trust and Corporate Services Providers and Company Managers

November 2023



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List of Acronyms

BTCA	Bank and Trust Companies Act
CIMA	Cayman Islands Monetary Authority
CMA	Companies Management Act
MAA	Monetary Authority Act
TCSPs	Trust and Corporate Service Providers

For Consultation



Rule and Statement of Guidance

Market Conduct for Trust and Corporate Services Providers and Company Managers

1. Introduction

- 1.1 This document ("the Rule and Statement of Guidance") establishes the Cayman Islands Monetary Authority's (the "Authority" or "CIMA") Rule and Statement of Guidance on Market Conduct for Trust and Corporate Services Providers ("TCSPs") and Company Managers.
- 1.2 The Rule and Statement of Guidance should be read in conjunction with the following:
 - a) the Banks and Trust Companies Act ("BTCA") and the Companies Management Act ("CMA"); and
 - b) any other relevant regulatory measures issued by the Authority from time to time.
- 1.3 Where applicable, any Acts referred to in this document include related regulations as may be amended from time to time.
- 1.4 To highlight the Authority's rules within the compendium, a rule is written in light blue and designated with the letter "R" in the right margin.

2. Statement of Objectives

- 2.1. This Rule and Statement of Guidance establishes minimum requirements and guidance for TCSPs and Company Managers to ensure fair treatment of Clients and general protection of Clients' assets and monies in relation to the business of company management and trust business.
- 2.2. The Rules herein are binding on Regulated Person and establish the minimum requirements Regulated Person must at all times comply with when providing business of company management and trust business, whereas the guidance, not intended to be prescriptive or exhaustive, sets out the Authority's minimum expectations relating to the market conduct of TCSPs and Company Managers.

3. Statutory Authority

- 3.1. This Rule and Statement of Guidance is consistent with the Authority's statutory objectives as prescribed in Section 34 of the Monetary Authority Act ("MAA"), which provides that the Authority may issue rules, statements of principles, or statements of guidance:

"34(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 acts may apply;*
- (c) *issue or amend rules or statements of principle or guidance to reduce the risk of financial services business being used for money laundering or other criminal purposes.”*

4. Scope of Application

4.1. This Rule and Statement of Guidance applies to:

- a) Holders of a Trust Licence, Restricted Trust Licence and Nominee Trust Licence that have been issued under the Banks and Trust Companies Act (“BTCA”)¹; and
- b) Holders of a Companies Management Licence and Corporate Services Licence that have been issued under the Companies Management Act (“CMA”).

4.2. The Authority will assess Regulated Persons’ compliance with this Rule and Statement of Guidance in a proportionate manner commensurate with the size, complexity, structure, nature of business and risk profile of its operations.

4.3. The Authority acknowledges that Regulated Persons that are part of a group may be subject to group-wide market conduct practices, and that such Persons may rely on service providers in respect of certain market conduct matters. Where a Regulated Person is part of a group, it may rely on the group market conduct framework provided that the Regulated Persons’ Governing Body is satisfied that the framework is commensurate with the size, complexity, structure, nature of business and risk profile of its operations and legal requirements in the Cayman Islands, including those outlined in this Rule and Statement of Guidance. Where gaps are identified, a tailored market conduct framework that complies with the legal requirements in the Cayman Islands is required for Regulated Persons.

5. Definitions

5.1. The following definitions are provided for the purpose of this Rule and Statement of Guidance:

5.1.1. “**Client**” refers to any person who has;

- entered into an agreement for the provision of services by a Regulated Person when carrying on trust, corporate service or company management business.

¹ As defined in the activities listed in the definitions under 5.1.6 of this RSOG.

- received or may receive the benefit of services provided or arranged by the TCSP when carrying on trust, corporate or company management business.

In the case of holders of a Trust, Restricted Trust or Nominee Trust license, "Client" may also refer to a beneficiary of any trust administered by a Trust, Restricted Trust or Nominee Trust.

- 5.1.2. "**Client Money**" includes money that a Regulated Person holds or receives on behalf of a Client or owes to a Client.
- 5.1.3. "**Complaint**" means any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a service that relates to trust business or company management business carried on by a Regulated Person, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.
- 5.1.4. The "**Governing Body**" of a Regulated entity is the Board of Directors where the entity is a corporation, the General Partner where the entity is a partnership, the manager (or equivalent) where the entity is a Limited Liability Company, and the Trustee or the Board of Trustees where the entity is a trust business.
- 5.1.5. "**Regulated Person**" for the purpose of this RSOG means a natural or a legal person or arrangement that has been approved, licensed, registered, or supervised by the Authority pursuant to the relevant regulatory Acts under the **Scope of Application**².
- 5.1.6. "**TCSPs**" refer to those who undertake any one or more of the following activities pursuant to the BTCA or the CMA as applicable:
- acting as a Corporate or Partnership formation Agent;
 - acting as (or arranging for another person to act as) a Director, Secretary or Official of a Company or a Partner of a Partnership or as a Foundation Official;
 - providing administration or management of a Trust, Company, Partnership, Foundation or for any other legal person or legal arrangement;
 - providing registered office, business address for accommodation, correspondence for administrative address for a Company, Partnership, Foundation or for any other person;
 - acting as a Resident Agent for the purposes of meeting requirements to hold beneficial ownership or interest information;
 - acting as (or arranging for another person to act as) a Trustee of an Express Trust³; and
 - acting as (or arranging for another person to act as) a Nominee Shareholder for another legal person.

² For example, holders of a Companies Management Licence, a Corporate Services Licence, a Trust Licence, a Restricted Trust, and Nominee Trust Licence.

³ means a trust created by an instrument in writing.

- Persons who act as Executors and Administrators.
- establishing and maintaining beneficial ownership registers on behalf of companies and limited liability companies incorporated or formed in the Islands, offering an information technology solution to those companies and limited liability companies to make extracts of information on the beneficial ownership register searchable by the competent authority established under Part XVIIIA of the *Companies Act (2021 Revision)* and responding to requests from the competent authority about whether a company or a limited liability company or a subsidiary of the same is exempted from the application of that Part or of Part 12 of the *Limited Liability Companies Act (2021 Revision)*

6. Integrity

- 6.1. A Regulated Person must, in all its dealings with Clients and within the context of its authorisation(s), conduct its business with integrity and honesty. R
- 6.2. A Regulated Person must communicate with its Clients in a clear and precise manner in writing. R
- 6.3. A Regulated Person must avoid unethical business practices and must not attempt to circumvent the requirements contained within this Rule and Statement of Guidance. R
- 6.4. A Regulated Person must keep the affairs of Clients confidential except where disclosure of information is required or permitted by an applicable act or by guidance published by the Authority or its authorised by the person(s) to whom the duty of confidentiality is owed. R
- 6.5. A Regulated Person must not represent to Clients or prospective Clients that it is indemnified against any liability that may arise as a result of the conduct of its business as a Regulated Person. R
- 6.6. A Regulated Person must ensure fair treatment of its Clients. R
- 6.7. The relationship between a Regulated Person and its Clients should be based on integrity, trust, and utmost good faith, demonstrated by the Regulated Person acting in the best interests of its Clients by always upholding and acting in accordance with the terms of the documentation governing their relationship.
- 6.8. The Authority expects a Regulated Person to create an open, transparent, fair, and honest business environment for its Clients. In addition, the Regulated Person should offer only those services that are relevant to the Client agreement or terms of business documents; and perform as Clients have been led to expect. The information and advice provided by the Regulated Person to each Client should be clear, appropriate, and according to each Client's circumstances.
- 6.9. A Regulated Person must establish and document clear policies and procedures that ensure it acts with due skill, care and diligence in the conduct of its R

business and fulfil the responsibilities that it has undertaken on behalf of its Client.

- 6.10. The Authority expects that, throughout the lifetime of the relationship with its Clients, a Regulated Person should maintain appropriate and reliable interactions while exercising care and prudence.
- 6.11. In establishing that a Regulated Person is acting in the best interest of its Clients, there should be adequate procedures reviewed, approved and implemented by the Governing Body of a Regulated Person. In addition, a Regulated Person should ensure that detailed, robust reviews are conducted at appropriate intervals with respect to the trust, corporate business or company management business that the Regulated Person provides to its Clients.
- 6.12. Specifically, Corporate Service Providers and Company Managers should treat each Client's best interests as paramount, subject to their legal obligations to other persons or bodies. The holders of Trust, Restricted Trust and Nominee Trust Licence should treat the interests of beneficiaries and/or purposes (as applicable) as paramount and act impartially between beneficiaries subject to the terms of the trust and their legal obligations.
- 6.13. A Regulated Person must ensure that it fully understands the duties arising under the Acts relevant to the administration and affairs of Clients in the jurisdictions where their business is carried out and the assets managed are held. R
- 6.14. A Regulated Person must ensure that decisions taken or transactions entered into by or on behalf of Clients, or in respect of Client structures are : R
- a) within the scope of authority of the Regulated Person;
 - b) documented and actioned by the Regulated Person in a timely manner commensurate with the size, complexity, structure, nature of business and risk profile of its operations; and
 - c) properly authorised and handled by persons with an appropriate level of knowledge, experience and status.
- 6.15. With regard to maintaining timeliness of transactions, a Regulated Person is guided to transact its business (including establishing, transferring or closing business relationships with its Clients) expeditiously, meaning without delay.

7. Conflicts of Interest

- 7.1. A Regulated Person must have in place and operate according to a written conflicts of interest policy commensurate to the size, complexity, structure, nature of business and risk profile of its operations. The conflicts of interest policy must: R
- a) identify, with reference to the regulated activities carried out by or on behalf of the Regulated Person, the circumstances which constitute or may give rise to a conflict of interest entailing a risk of damage to the interests of its Clients; and

- b) specify procedures to be followed and measures to be adopted in order to manage such conflicts.
- 7.2. Where direct or indirect conflicts of interest arise and cannot be reasonably avoided, a Regulated Person must: R
- a) disclose the general nature and/or source of the conflicts of interest to the Client;
 - b) only undertake business with or on behalf of a Client where that Client has acknowledged in writing that they are aware of the conflict of interest and still wants to proceed; and
 - c) ensure that the conflict does not result in damage to the Client's interest.
- 7.3. As a general principle, a Regulated Person should make every effort to avoid or minimise any conflicts of interest. However, in the event that a conflict of interest arises, a Regulated Person should ensure fair treatment to all its Clients by applying internal policies and procedures concerning disclosure; applying its internal rules of confidentiality, declining to act; or, where possible, in compliance with applicable fiduciary duties; withdrawing from the relationship; or otherwise, as appropriate.
- 7.4. In order to demonstrate that it not unfairly placing its interests above a Client's interests, a Regulated Person should ensure that it proactively, properly and reasonably declares, in writing, any conflict of interests to Clients.

8. Advice and Use of Discretion

- 8.1. The Authority expects a Regulated Person to take reasonable steps to provide its Clients with comprehensible and timely information needed to enable each Client to make a balanced and informed decision. Any advice a Regulated Person provides to its Clients, whether solicited or unsolicited, should be provided objectively, independently, and in the Client's best interest.
- 8.2. A Regulated Person should provide a full and fair account of the fulfilment of its responsibilities to its Client when requested.
- 8.3. Where a Regulated Person uses its discretion to make a decision on behalf of a Client, the Regulated Person must ensure that: R
- a) all reasonable steps were taken to obtain sufficient information to exercise such discretion;
 - b) the discretion or power used was for a proper purpose; and
 - c) written evidence is recorded for such a decision made.

9. Client Money and Assets

- 9.1. A Regulated Person must implement policies and procedures that ensure due care, skill and diligence are applied when administering and holding Client Money. R



- 9.2. A Regulated Person must hold Client Money in an account that is clearly segregated and distinct from other Clients' accounts and from any accounts of the Regulated Person. R
- 9.3. A Regulated Person must not hold Client Money in an entity that is subject to any sanctions or in an entity that meets the criteria of a shell bank. R
- 9.4. The account where the Client money is held must not be operated until the Regulated Person has obtained written confirmation from the entity holding the money that: R
- a) the account is a Client account, and that money standing to the credit of the account is held by the Regulated Person as a trustee;
 - b) the entity is not entitled to combine the account with any other account or exercise any right of set-off or counterclaim against money in the account in respect of a debt or other obligation owed to it by the Regulated Person;
 - c) interest earned on the account will be credited to that account or to an account of that type.
- 9.5. A Regulated Person must disclose to Client the terms upon which Client Money is held. R
- 9.6. A Regulated Person must pay any interest earned on Client Money in accordance with the terms set out in the Client agreement or terms of business document, and if no interest is to be paid, such agreement or terms of business document must record this fact. R
- 9.7. A Regulated Person must implement policies and procedures to ensure appropriate authorisations and signing powers, at a minimum, dual signatures in the event of Client Money payouts, subject to the Client agreement or terms of business document. R
- 9.8. A Regulated Person must implement policies and procedures to prevent the use of Client Money for the settlement of the Regulated Person's fees and disbursements, subject to the Client agreement or terms of business document, and protect the Client's assets from theft, fraud and other forms of misappropriation or inappropriate use. R
- 9.9. Where a Regulated Person is responsible for administering or holding Client assets other than Client Money, the Regulated Person must develop appropriate documented policies and clear procedures that ensure: R
- a) it acts with professional skill, care and diligence with regard to the administration of those assets;
 - b) the Client's assets are segregated from those of the Regulated Person; and
 - c) there are documented systems, controls and procedures to effectively reconcile any receipt or movement of a Client's assets administered by a Regulated Person.

- 9.10. A Regulated Person must have documented systems, controls and procedures governing the sole, dual or multiple authorisations for handling its Clients' assets commensurate with the size, complexity, structure, nature of business and risk profile of its operations. R
- 9.11. Regulated entities must ensure that Client Money accounts are reconciled promptly. R
- 9.12. It is expected that the Regulated Person reconciles the balance on each Client's account as recorded by the Regulated Person with the balance on that account as set out in the statement issued by the entity in which the Client's Money is held, covering the period under which the reconciliation is made. Any differences recognised in the reconciliation of such Client Money accounts should be corrected without delay. In respect of the timeliness of conducting reconciliations, Regulated Persons should promptly reconcile Client Money accounts and record same, commensurate with the size, complexity, structure, nature of business and risk profile of its operations.
- 9.13. Holders of Trust, Restricted Trust, and Nominee Trust Licence must ensure that, in carrying out their duties as trustees, fiduciaries and/or administrators, they safeguard the assets of the trusts and act in accordance with the trust deed and applicable Acts or Persons who act as Executors and Administrators. R
- 9.14. The Authority expects that Holders of Trust, Restricted Trust, and Nominee Trust Licence should act professionally and responsibly in the best interest of the beneficiaries and/or its purposes.
- 10. Resources**
- 10.1. A Regulated Person must establish and maintain appropriate policies, procedures and controls to monitor and ensure it always has the requisite capacity and resources to provide the services agreed upon with its Clients. R
- 11. Advertising and Communication**
- 11.1. A Regulated Person must ensure that its advertising and communication practices: R
- a) do not violate applicable regulations;
 - b) do not violate standards of prudence and fairness;
 - c) are clear, ethical, factual, and not misleading, false or deceptive;
 - d) do not present or promote any services that it is not licensed to provide;
 - e) do not contain any element that is in breach of Acts or promotes the breach of any legislation;
 - f) disclose to its Clients and prospective Clients any foreseeable risk with any service it provides to them; and
 - g) as far as possible, do not place the Cayman Islands at risk of being brought into disrepute.

- 11.2. The Authority expects a Regulated Person to take reasonable steps to ensure that words in financial service advertisements are chosen carefully and treated with great caution. In addition, statements, whether in a written or broadcasted advertisement, should avoid the use of terminology such as “guaranteed”, “confidential”, “assured”, “secret”, *inter alia*.
- 11.3. Without limiting the generality of Rule 11.1, if a Regulated Person includes the following information in its advertisements or communication, the information should be sufficiently verifiable:
- Its ability to provide the advertised service;
 - the scale of activities;
 - the extent of the resources;
 - the nature of the Regulated Person’s involvement in the advertised service;
 - the scarcity of the advertised service;
 - past performance or possible future performance of the advertised service
- 11.4. A Regulated Person should notify a Client if it is acting as an agent or instructing an agent in relation to particular services.
- 11.5. With regards to communication with potential Clients or Clients, a Regulated Person should provide information in a way that is suitable, using plain language and terminology. It is expected that a Regulated Person should disclose information regarding key risks, fees and charges, and relevant terms and conditions before any commitment is made between the Regulated Person and a Client. The intention is to ensure that a potential Client is able to make an informed decision.

12. Terms of Business

- 12.1. [A Regulated Person must enter written terms of business with Clients for whom they have agreed to act.](#) R
- 12.2. It is expected that at all times mutually agreed terms are aptly confirmed in writing with the Client, including the instructions received, the authority granted, and the capacity and scope of discretion, if any, within which the Regulated Person will act for its Client.
- 12.3. A Regulated Person should be able to demonstrate that adequate disclosure of the main risks and the relevant terms and conditions was made to its Clients to enable them to make informed decisions before committing to the negotiated terms of business.
- 12.4. The Authority expects a Regulated Person to confirm the services it provides in a contract, agreement or other written form setting out its general and specific terms associated with providing those services, including evidence of the Client’s agreement to those terms.

- 12.5. The terms of business document provided by a Regulated Person must include the following elements: R
- a) a clear description of the services to be provided;
 - b) any fees to be charged, the basis of the calculation of those fees and the ability, if any, to make changes to the basis for determining fees. Adequate notice must be given before any material change to fee structures;
 - c) confirmation of how and by whom requests for actions are to be given (as applicable to the Client and/or the structure);
 - d) a description of the procedure for dealing with any Complaints;
 - e) that termination of a relationship be on reasonable notice and the consequences of termination clearly noted, if any, unless an extenuating reason is provided;
 - f) a statement that the Regulated Person is licensed by the Authority.
- 12.6. The agreed terms of business between a Regulated Person and its Clients should also ensure that the documentation:
- a) is commensurate to the size, complexity, structure, nature of business and risk profile of the Regulated Person's operations;
 - b) be distinguishable from marketing or promotional material;
 - c) be consistent with this Rule and Guidance and other relevant measures as noted in section 1.1 of this document;
 - d) be clearly expressed in plain language that only uses technical or legal terms where absolutely necessary. Where technical/legal terms are used, they should be clearly defined for clarity.
 - e) be provided prior to the provision of any services in connection to the business of company management or trust business, except when it is impractical to do so, in which case the document should be provided at the earliest available opportunity;
 - f) explains whether the Regulated Person is acting as a principal or as the agent of the person to whom the service is provided or any other person(s);
 - g) sets out the terms on which money is held in those cases where the Regulated Person holds a Client's money; and
 - h) includes all appropriate information relevant to the service that will be provided.
- 12.7. Any special or non-standard fee arrangement must be established in writing. R

- 12.8. Where a Regulated Person acts as a nominee shareholder to hold shares on behalf of another for the beneficial owner of a Client structure, the Regulated Person must ensure that there is a written nominee agreement. R
- 12.9. A nominee agreement can be considered to be a document that clearly identifies the beneficial owner and all appropriate nominee information to the service that is being provided; and a copy of which should be retained in its records.
- 12.10. A Regulated Person should accurately record the basis of any charges in respect of time spent and disbursements and make the relevant records available to Clients upon request.

13. Directorship Services

- 13.1. Where a holder of Companies Management Licence is acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of a director or alternate director of a company, the holder of Companies Management Licence:
- a) where it acts or arranges for another to act:
 - i. should take reasonable steps to ensure that those persons acting as directors understand their obligations under the relevant Acts, including those Acts of the jurisdiction(s) that are applicable to services requested by the Client;
 - ii. should have appropriate policies and controls in place to address potential or real conflicts of interest that may arise between it and the person who is acting or between the person acting and any other relevant party (for example, related parties of the Regulated Person that may also be providing services to the Client) and if any conflicts exist that they are disclosed the Client (see section 7);
 - iii. must have appropriate policies and controls to properly assess and determine that those acting are fit and proper, suitable, competent, understand their duties and are able to comply with the requirements of the relevant Acts; R
 - iv. should not facilitate any arrangement that deliberately promotes the appointment of a "nominee" director. An appointed director should be aware that he has a duty to act in the best interests of any company for which he is appointed to its board; and
 - v. should have in place adequate policies and controls to satisfy itself that, prior to appointment, proposed directors have adequate resources to discharge their corporate governance obligations effectively to every company for which they provide directorship services.
 - b) keep or satisfy itself that appropriate policies and necessary controls are in place to allow records to be kept that are sufficient to show and explain transactions and disclose, with reasonable accuracy, the financial position of the structures under administration and in keeping with relevant Acts; and

- c) should forthrightly and clearly disclose to its Clients for whom it acts or arranges for another to act its limitations in terms of its liability in writing.

14. Complaints Handling

- 14.1. A Regulated Person must establish an effective documented Complaints handling system and procedures that allow for the proper, fair, and just management of Complaints. R
- 14.2. A Regulated Person must maintain an up-to-date and comprehensive log of all Complaints from Clients subject to the Complaint's handling procedures. This log must contain: R
 - a) details of each Complaint ;
 - b) the date the Complaint was received;
 - c) a summary of the Regulated Person's response(s), including dates;
 - d) details of any other relevant correspondence or records;
 - e) the action taken to resolve each Complaint ;
 - f) where relevant, the current status of any Complaint which has been referred to the relevant Ombudsman; and
 - g) the date the Complaint was resolved.
- 14.3. Upon receipt of a Complaint, a Regulated Person must, within five (5) business days, unless expressly agreed by the complainant to the contrary, provide the complainant with an acknowledgement in writing that the Complaint has been received and is being considered. R
- 14.4. The Authority expects a Regulated Person to undertake an appropriate analysis of the patterns of Complaints from Clients on a regular basis, including investigating whether Complaints indicate an isolated issue or a more widespread issue for Clients and consider updating or revising its market conduct-related policies and procedures or its policies and procedures generally, where applicable. This analysis of consumer Complaints should be escalated to the Regulated Person's compliance/risk function and senior management.
- 14.5. As appropriate, a Regulated Person should document the investigations, analyses and actions taken about Complaints made by Clients against it or its employees. It is expected that a Regulated Person informs Clients of how Complaints may be made and how they will be responded to. The handling of Complaints should be transparent, efficient, thorough, and impartial. In addition, a Regulated Person should not unnecessarily delay responses to or resolution of Complaints in an effort to frustrate the process or the Client.
- 14.6. The Authority expects a Regulated Person to reasonably keep the complainant informed about the progress of their Complaint, including details of any actions being taken to resolve it. The Regulated Person should provide the complainant with the name of one or more individuals appointed by the Regulated Person to be the complainant's point of contact in relation to the Complaint until it is resolved.



- 14.7. A Regulated Person should confirm to the complainant in writing when a Complaint has been closed. If a Regulated Person concludes that it is not upholding a Complaint, it should communicate this to the complainant in writing, clearly stating the reason(s) for its decision.

15. Enforcement

- 15.1. Whenever there has been a breach of the Rules included in this document, the Authority's policies and procedures, as contained in its Enforcement Manual, will apply in addition to any other powers provided in the relevant Acts and the MAA.

16. Effective Date

- 16.1. This Rule and Statement of Guidance will come into effect within **six (6) months** of the date that it is published in the Gazette.



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