

# CAYMAN ISLANDS MONETARY AUTHORITY

## PRIVATE SECTOR CONSULTATION



### STATEMENT OF GUIDANCE – MARKET CONDUCT FOR TRUST AND CORPORATE SERVICES PROVIDERS

#### A. Introduction

1. Section 34(1)(a) of the Monetary Authority Law (2018 Revision) (“MAL”) 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 MAL as follows:

*When this Law 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 ("Authority" or "CIMA") seeks consultation and comment from the private sector associations concerning the following:
  - a. Statement of Guidance ("SoG") – Market Conduct for Trust and Corporate Services Providers ("TCSP")
4. The new SOG is attached as Appendix 1.

**B. Background**

5. In October 2014, the Group of International Finance Centre Supervisors ("GIFCS") issued the Standard on the Regulation of Trust and Corporate Service Providers ("SRTC") which is applicable to all GIFCS members. The Authority is a member of GIFCS and contributed to the development of the said standards. A self-assessment against the SRTC revealed that the current framework does not fully meet the requirements of the standards on vehicle assets and client money rules, and the standard on conduct.
6. While the SRTC does not yet form part of the International Monetary Fund, the GIFCS is recognised as a leading authority on the regulation of TCSPs. The GIFCS completed its first assessment against the SRTC, of Jersey, a GIFCS member and competing jurisdiction. The feedback on the process strongly suggests that Jersey's assessment results were positive. CIMA is set to undergo an assessment against the SRTC shortly and it would be prudent to ensure that any identified gaps are addressed as quickly as possible or as soon thereafter.
7. In the global context, the 2009 financial crisis highlighted the need for stronger consumer protection and appropriate guidelines in respect of market conduct. The G20 leaders at the G20 Cannes Summit in November 2011 declared that the "...integration of financial consumer protection policies into regulatory and supervisory frameworks contributes to strengthening financial stability". Over the years, global standard setters have recognized and have worked on and continue to work on enhancing the approach to consumer protection and financial inclusion and as a result market conduct in the financial services arena. There is a general move toward the development of market conduct guidelines by the various globally significant bodies.
8. In terms of the current framework, section 18 of both the Banks and Trust Companies Law ("BTCL") and the Companies Management Law ("CML") provides that where certain infractions take place, the Authority can take enforcement action including revocation of licence, setting conditions or requiring the licensee to immediately take steps to rectify the matter, among other things. One such instance is where the Authority is of the view that licensees are acting in a manner that is detrimental to the interest of clients or to the interest of creditors (in the case of corporate service providers under the CML) and interest of depositors or of the beneficiaries of any trust, or

other creditors (in the case of banks and trust companies under the BTCL). Therefore, as part of the Authority's regulatory and supervisory function, it has an obligation to offer such guidance to licensees on appropriate conduct in order to ensure their clients are treated as fairly as possible and in a way that offers not only reasonable protection to clients but to licensees also.

9. The SoG was drafted to help narrow the gap noted by the Authority in its self-assessment against the SRTC in relation to market conduct, vehicle assets, client money rules and in keeping with the Authority's mandate under the BTCL and the CML. The scope of application for the SOG are:
  - a. Trust Licences, Restricted Trust Licences and Nominee Trust Licences issued under the BTCL
  - b. Companies Management Licences and Corporate Services Licences issued under the CML

**C. Purpose of Proposed Measure and Consistency with the Authority's Functions**

10. Section 6(1) of the MAL 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 ..."
11. Section 6(3) of the MAL provides that in performing its regulatory functions, the Authority shall, inter alia:
  - a. endeavour to promote and enhance market confidence and the reputation of the Islands as a financial centre;
  - b. recognise the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, vis a vis 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;
  - c. recognise the principle that a burden or restriction which is imposed on a person or activity should be proportionate to the benefits, considered in general terms; and
  - d. recognise the desirability of facilitating innovation in financial services business.
12. The proposed SOG will ultimately further the regulatory function of the Authority in line with Sections 6(1) and 6(3) of the MAL, as stated above.
13. The SoG will provide guidance on areas relating to market conduct that the Authority expects as a matter of best practice and allows for closer alignment with the SRTC in areas that are not sufficiently captured or not captured at all in current regulatory measures issued (i.e. SoG Internal Controls; Regulatory Policy on Marketing). The SoG will help to minimise risks posed not only to consumers but to licensees that do not currently have market conduct related policies and procedures in place to help minimize the possibility of facing liability as a result of possible law suits. Such law suits could also pose a risk

to the jurisdiction from a reputational standpoint which will in turn negatively affect licensees, the industry and the economy on a whole.

14. The guidance offered within the SoG cover the following key areas of the SRTC:
  - a. Rules for the administering of and holding of Client monies;
  - b. Professional skill care and diligence with regard to the administration of Vehicle assets;
  - c. Integrity;
  - d. Conflicts of Interest;
  - e. Interaction with Clients;
  - f. Advertising and Communication;
  - g. Terms of Business; and
  - h. Complaints Handling.
15. A transitional period of six months has been offered to give licensees time to develop appropriate policies and procedures or to revise current ones in order to effectively implement the guidance.
16. Fundamentally, the new SOG will help ensure that (1) the supervisory framework is more in line with the SRTC, (2) clients of licensees are better protected, and (3) entities have appropriate policies and procedures in place to help avoid conflicts of interest and the possibility of misconduct.

**D. Implementation in Other Jurisdictions**

17. In completing the comparison of jurisdictions, the Authority looked at reputable jurisdictions and more importantly those that are also GIFCS members as they are also required to apply the SRTC, namely Bahamas, Bermuda, BVI, Guernsey and Jersey.

**Bahamas**

18. There is a general requirement in the Financial Corporate Service Providers Act for licensees to maintain a high standard of professional conduct in the performance of his duties as a licensee and to refrain from engaging himself or any of his employees in any illegal or improper conduct. There is an expectation in the Banks and Trust Companies Law for a licensee to carry on its business in a manner that is not detrimental to the public's interest or to the interest of creditors.
19. The Bahamas does not appear to have issued any specific or detailed guidance to TCSPs relating to conduct. In a recent media release (March 2018), the Securities Commission of The Bahamas as the Inspector of Financial and Corporate Services, confirmed that the regulatory framework is being revised to enhance the oversight of financial and corporate services activities, clarify and establish clear and distinct categories of licensable financial and corporate service providers ("FCSPs") including the

establishment of appropriate standards of conduct and obligations for FCSPs that are proportionate.

### **Bermuda**

20. The Bermuda Monetary Authority issued Codes of Practice in respect of both Corporate Service Providers and Trust Business, each Code to be read in conjunction with its respective Statement of Principle. The Code in respect of trust business licensees includes, among other things, guidance on integrity and ethics, trust creation, disclosure of information, internal management controls, prompt and timely execution, delegation, adequate personnel, adequate systems and controls, fees and remuneration, internal complaints procedures, disclosure of licensing body, co-operation with regulatory authorities. The Code in respect of Corporate Service Providers includes similar elements to those in the Trust Code along with others such as client agreements, client complaints procedure, nominee shareholder agreements and risk management framework.

### **BVI**

21. It appears that the BVI Financial Services Commission is also in the early stage of revamping its regulatory framework relating to TCSPs. Remarks made by the Deputy Managing Director of the Financial Services Commission in a recent "Meet the Regulator" event (April 2018), indicated that the Commission intends to formalise the inclusion of conduct regulation to include principles and guidelines that govern how financial services providers should operate to ensure fair market conduct and the fair treatment of customers. No date was noted on when these framework changes would likely be completed and made effective.

### **Guernsey**

22. The Guernsey Financial Services Committee ("GFSC") issued separate Codes in respect of Corporate Service Providers and Trust Service Providers. It also issued Principles of Conduct of Finance Business in respect of financial institutions generally. The Code relating to Trust Service Providers includes guidance relating to integrity, know your client, beneficiaries' best interest, competence and effective management, insurance cover and cooperation with regulatory authorities. The Code in respect of Corporate Service Providers includes the same elements to those in the Trust Code with one difference being "clients' best interest" rather than beneficiaries.

### **Jersey**

23. Under the Financial Services (Jersey) Law 1998, the Code of Practice for Trust Company Business was issued by the Jersey Financial Services Commission ("JFSC") to set out the principles and detailed requirements that must be complied with in the conduct of trust company business<sup>1</sup>. The JFSC issued a Code of Practice for Trust Company Business (last revised 21 March 2018) outlining its expectations around seven principles, namely:

- A registered person must conduct its business with integrity.

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<sup>1</sup> Trust company business refers to trust and companies management business.

- A registered person must have the highest regard for the interests of its customers.
- A registered person must organise and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems.
- A registered person must be transparent in its business arrangements.
- A registered person must maintain, and be able to demonstrate the existence of, adequate financial resources and adequate insurance.
- A registered person must deal with the JFSC in an open and co-operative manner.
- A registered person must not make statements that are misleading, false or deceptive.

**Comparison Summary**

24. Of the jurisdictions considered, Bermuda, Guernsey, Jersey seems to be the most advanced in terms of their market conduct framework in respect of TCSPs (see Table 1 below). Jersey, Guernsey and Bermuda all appear to have included some elements contained within their Codes that appear similar to elements that CIMA would normally include in measures such as corporate governance, licensing policies, and internal controls. In developing the SoG, special attention was paid to Jersey’s approach given that all indications are that its recent GIFCS assessment results were favourable. The Authority also considered Guernsey and Bermuda’s approach as they both have issued guidance in respect of TCSPs’ conduct.

**Table 1 – Market Conduct Requirements for TCSPs in Comparative Jurisdictions**

	<b>Bahamas</b>	<b>Bermuda</b>	<b>BVI</b>	<b>Guernsey</b>	<b>Jersey</b>
<b>Conduct Measure(s)</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	<b>Yes</b>	<b>Yes</b>
<b>Integrity</b>	-	✓	-	✓	✓
<b>Conflicts of Interest</b>	-	✓	-	✓	✓
<b>Relationship with clients</b>	-	✓	-	✓	✓
<b>Advertising and Marketing</b>	-	✓	-	✓	✓
<b>Terms of Business</b>	-	✓	-	✓	✓
<b>Complaints handling</b>	-	✓	-	✓	✓

**E. Significant Costs and Benefits**

25. The table below shows the estimated costs (including possible risks if the measures are not revised) and benefits relating to the revised measures.

**Table 2 -- Cost/Risk to Benefits**

	<b>Costs/Risks</b>	<b>Benefits</b>
<b><i>The Authority</i></b>	<p>The Authority will incur the usual Administrative costs associated with conducting industry consultation, publication, amending CIMA's supervisory manuals and staff training.</p> <p>These costs are not deemed to be overly burdensome and represent usual costs of the Authority carrying out its mandate.</p>	<p>Enhance and support supervisory framework and oversight of TCSPs.</p> <p>Better able to inspect TCSPs with an elevated degree of consistency.</p> <p>Closer alignment with the GIFCS standard and international best practice.</p> <p>Further enhance the Authority's risk based approach to its supervision given that the Authority will assess TCSPs' compliance with the SoG in a proportionate manner relative to their nature, scale and complexity.</p> <p>Improvements in enforcement process under section 18 of the BTCL and CML for acting in a manner detrimental to clients, as clear standard against which to assess TCSPs' conduct.</p>
<b><i>Cayman Islands</i></b>	<p>There are no costs to the jurisdiction as a whole with the new SOG.</p> <p>Without the SoG, the GIFCS may assess the country negatively against the SRTC possibly resulting in reputational harm to the jurisdiction.</p>	<p>A more consistent approach to market conduct will promote financial and economic stability and a financial market which is less susceptible to fraud.</p> <p>Will promote enhanced consumer protection and transparency and help reduce undesirable and unfair practices.</p> <p>Improve results of future assessments by GIFCS assessors, which could improve the reputation of the Cayman Islands as a domicile for TCSPs and attractive domicile for clients.</p>
<b><i>TCSPs</i></b>	<p>No significant cost to licensees falling within the scope of the SoG as the guidance is based on reasonable expectations for</p>	<p>Will help ensure appropriate approaches to conflicts of interest, ethical advertising, fair dealings with customers and complaints</p>

	<b>Costs/Risks</b>	<b>Benefits</b>
	<p>business generally to conduct their affairs in a fair and ethical manner while controlling conflicts of interest as much as possible.</p> <p>Relatively small costs relating to the development of appropriate policies and procedures for those TCSPs that do not already have them in place or revisions to existing policies and procedures.</p>	<p>handling, among other things.</p> <p>Reduce the possibility of fraud within licensees as a result of more robust approach to dealing with such things as conflicts of interest.</p> <p>Reduce the possibility of legal and reputational implications if action is taken by clients as a result of fraud or poor disclosure and unethical advertising.</p> <p>Enhance client confidence, potentially leading to increased business opportunities.</p>
<b>Summary</b>	Consequent on the above, it is determined that benefits far outweigh costs and/or possible risks associated with the issuance of the new SOG.	

**F. Comments and Consultation**

2. The Authority seeks consultation through written comments and representations from the private sector associations concerning the new
  - a. Statement of Guidance – Market Conduct for Trust and Corporate Services Providers
3. The Authority must receive representations by **Monday, 29 October, 2018.**
4. Comments and representations must be addressed to
 

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5. 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.