



PRIVATE SECTOR CONSULTATION
Rule and Statement of Guidance -
Recruitment and Selection Standards for
Trust and Corporate Service Providers and
Company Managers

Private Sector Consultation

Rule and Statement of Guidance - Recruitment and Selection Standards for Trust and Corporate Service Providers and Company Managers

A. Introduction

1. Section 34(1)(a) of the Monetary Authority Act (2020 Revision) ("MAA") 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 MAA 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 ("the Authority" or "CIMA") seeks consultation and comment from the private sector associations concerning the **Rule and Statement of Guidance – Recruitment and Selection Standards for Trust and Corporate Service Providers and Company Managers** ("the RSOG") (attached as Appendix 1).

B. Background

In 2018, the Authority conducted a self-assessment of the Cayman Islands' trusts and corporate services sector against the Group of International Finance Centre Supervisors ("GIFCS") Standards on the Regulation of Trust and Corporate Service Providers ("SRTCs" or "the Standards"). The Standards introduce a minimum benchmark for the supervision of businesses administering international trusts and companies' services and broadly capture key areas of supervision, such as licensing and authorisations, corporate governance, prudential conduct, control over assets, international cooperation, and financial crime. The 2018 self-assessment highlighted areas of improvement in the Authority's regulatory framework for TCSPs, notably, the need for adequate measures to be put in place to supplement competence requirements for TCSPs' key persons.

4. To address the above weakness and in a proactive effort to improve compliance with the SRTCs, the Authority developed and issued a Statement of Guidance ("SOG") on Recruitment and Selection Standards for TCSPs in 2019.
5. Subsequently, in August 2020, the Cayman Islands underwent a GIFCS assessment, and a Mutual Evaluation Report ("MER") was released, revealing that the jurisdiction's regulatory/supervisory framework for the TCSPs sector, as it relates to recruitment and selection standards for employees of TCSPs, needed strengthening, as it lacked legal enforceability.
6. The GIFCS assessors paid special attention to enforceability by citing - *"as part of CIMA's oversight of TCSPs [there is] significant reliance on the issuance of guidance. The evaluating team's consistent approach has been that where it is not possible to demonstrate how breaches of guidance have led to the imposition of formal sanctions (which is generally the position), this has adversely affected the degree of perceived compliance."*
7. It is on this premise that the Authority has proposed the issuance of the RSOG on Recruitment and Selection Standards for Trust and Corporate Service Providers and Company Managers to strengthen its regulatory regime for TCSPs and fill the gaps of enforceability.

C. International Standards

8. GIFCS is the standard setter for the regulation of the trusts and corporate services industry. The sections of the SRTCs which were consulted in the drafting of the RSOG are included below:

Table I – International Standard Setter - the GIFCS SRTCs

Section	Standard
A. Licensing	1. This framework should allow for: 1.3. the Regulator to assess whether the Controllers of a TCSP are at the time of licensing, and remain, fit and proper to hold those interests and/or positions.
	1.4. the Regulator to assess whether the Key Persons of a TCSP are at the time of licensing, and remain, fit and proper to hold those positions.
	1.5. withdrawal of the relevant licence in the event that a TCSP is no longer fit and proper or is in material breach of regulatory standards.
	2. The Regulator should consider the ownership, structure, control and/or management of a TCSP. The ownership structure should not hinder effective supervision or facilitate regulatory arbitrage.

B. Corporate Governance	1. Regulators should require that a TCSP has embedded within it a robust corporate governance culture and framework. The Regulator should have in place an approval process for the direction and management of a TCSP which requires that: 1.9. Boards undertake a periodic self-assessment of their effectiveness.
C. Controllers of TCSPs	<p>1. Fit and Proper Standards</p> <p>1.1. The Regulator should ensure that:</p> <p>1.1.1. the Controllers of a TCSP must be, and must remain, fit and proper;</p> <p>1.1.3. the appointment of, or change in, a Controller may only take place after the Regulator has been notified and has positively confirmed its approval of, or no objection to, the appointment via a separate vetting process.</p> <p>1.1.4. where a Controller exercises a Key Person function within the TCSP, they undergo a separate approval process specific to that role; and</p> <p>1.1.5. it has powers to refuse approval and remove existing Controllers.</p> <p>1.2. Where a Controller is associated with a jurisdiction that is assessed as higher risk by the Regulator, the Regulator should require the TCSP to demonstrate that it can manage any such risks arising.</p> <p>2. Integrity</p> <p>2.1. The Regulator should require that any Controller acts with integrity at all times.</p> <p>3. Competence</p> <p>3.1. Controllers who exert an influence over the day to day affairs of a TCSP should be competent.</p>

9. Furthermore, it is recommended that consistency with other standard setters proposing regulatory oversight of fitness and propriety and competence standards for senior management is achieved. Therefore, although the Basel Committee on Banking Supervision's Basel Core Principles ("BCP") are specific to the banking sector, BCP 14 Corporate Governance Additional Criteria 1 provides appropriate guidance as it states that banks are required to notify supervisors when they become aware of material and bona fide information that may negatively affect the fitness and propriety of a member of the board or senior management.

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

10. The proposed measure aims to achieve enforceability for recruitment and selection standards, as best as possible, in line with recommendations from the GIFCS MER. The proposal is, therefore, to create an RSOG for the treatment of recruitment and selection standards, basing the majority of the content on the existing measure and GIFCS recommendations.
11. The Authority's mandate for this RSOG is found under Section 6(1)(b) of the MAA:
- (i) *"to regulate and supervise financial services business carried on in or from within the Islands in accordance with this Law and the regulatory laws;*
 - (ii) *to perform any other regulatory or supervisory duties that may be imposed on the Authority by any other law;"*

12. Furthermore, Section 6(3) of the MAA provides that in performing its regulatory functions and its co-operative functions, the Authority shall, *inter alia*:
- (a) "endeavour to promote and enhance market confidence, consumer protection and the reputation of the Islands as a financial centre;
 - (b) endeavour to reduce the possibility of financial services business or relevant financial business being used for the purpose of money laundering or other crime;"

E. Summary of Significant Revisions to the SOG

13. The RSOG was developed using the 2019 SOG as its foundation and **Table II** below summarises the key inclusions within this adapted measure:

Table II – Summary of Significant Revisions

Section	Summary of Significant Revisions
General	All references made to "Employees" were replaced with "Key Persons".
Introduction	<i>This section was amended to align with the new template of regulatory measures thus allowing for consistency among the measures issued by CIMA. It further outlines the complementary regulatory acts and measures which should be read in conjunction with this RSOG.</i>
Definitions	Three new definitions were added for: <ul style="list-style-type: none"> • Regulated Persons (added to replace the use of Licensees) • Governing Body • Trust and Corporate Service Providers
Section 5 – Recruitment of Key Persons Section 5.1 Recruitment Stage	Five (5) new clauses were added relating to: <ul style="list-style-type: none"> • Recruitment policy and procedures • Periodic review and updates to recruitment policy and procedures • Fitness and propriety of candidates offered employment contracts • Fairness and transparency in recruitment processes, in line with legislation • Adequate staffing in line with business plans
Section 5 – Recruitment of Key Persons Section 5.2 – Post-Recruitment	Three (3) new clauses were added to ensure: <ul style="list-style-type: none"> • Key persons remain competent, fit and proper, and effective to their role • Effective systems and procedures to supervise key persons • The systems and procedures are well documented
Section 6 Directorship Services and Obligations	One (1) guidance was added to require the: <ul style="list-style-type: none"> • Governing Body must undertake appropriately executed self-assessments of the performance of the governing body and individual members
Section 7 – Ongoing Training and Continuing Professional Development	Three (3) new clauses were added regarding: <ul style="list-style-type: none"> • Documentation of the policy and programme regarding training and Continuing Professional Development ("CPD") • Periodic review and updates to training/CPD policy and programme

	<ul style="list-style-type: none"> All key persons (incl. Senior Management and Governing Body) undertaking training and professional development at least annually
Section 9 - Record Keeping	One (1) rule was added requiring regulated persons to adhere to the Rule and Statement of Guidance – Nature, Accessibility and Retention of Records for Licensees Conducting the Business of Company Management.

F. Jurisdictional Comparison

14. This jurisdictional comparison focused on those jurisdictions that are GIFCS members, as they are required to apply the SRTCs and have robust TCSP sectors. These five (5) jurisdictions are Bermuda, the British Virgin Islands (“BVI”), Guernsey, Isle of Man and Jersey. The results of this review are summarised in **Table III** (with key provided) below.
15. The research shows that half of the countries’ recruitment and selection standards framework have enforceability elements. Bermuda, BVI and Jersey employed the largest number of enforceability measures in their recruitment and selection standards framework for TCSPs. Therefore, in developing the RSOG, it was prudent to strongly consider the approach in these jurisdictions, in combination with the GIFCS Standards and other relevant principles, guidance and recommendations.
16. All TCSPs in these jurisdictions are required to demonstrate that they have adequate and competent staff to carry out their business operations. All jurisdictions also have guidance in their fitness and propriety measures which require that persons in key functions have and maintain competence throughout the duration of their tenure within a specific role and require licensees to perform background checks on persons in key functions, including criminal history, regulatory censure, legal proceeding, sanctions etc. Furthermore, all of these jurisdictions have very specific guidance relating to the recruitment, selection and competence of trust and company business employees at every level. It is also worth noting that advanced jurisdictions such as Guernsey and Isle of Man do not have enforceable measures as it relates to recruitment and selection standards.

Key for Table III

Symbol	Type of Measure	Enforceability
R	Rule: the provision is found in a Rule or similar regulatory instrument, such as a Code of Practice, which is enforceable.	Yes
G	Guidance: the provision is found in a measure similar to a Guidance which is not enforceable.	No
A	Act: the provision is found within legislation which is enforceable.	Yes
✓	The requirement is deemed “Met” in the MER, but the source regulatory instrument was not identified.	-
-	Information has not been sourced.	-

Table III – Jurisdictional Comparison against the GIFCS SRTCs

SRTC Standards	Bermuda	BVI	Cayman¹	Guernsey	Isle of Man	Jersey
	2.1. The Regulator should require a TCSP to implement controls in respect of the recruitment and ongoing assessment of employees. The Regulator should require that the TCSP:					
2.1.1. <i>has recruitment procedures to ensure it employs employees who are competent to perform their roles;</i>	A	A	G	G	G	R
2.1.2. <i>appropriately supervises its employees</i>	R	A	G	G	G	R
2.1.3. <i>regularly reviews the competence of its employees, and that the level of competence is appropriate to the nature and size of the business; and</i>	G	A	G	G	G	R
2.1.4. <i>ensures all employees remain competent for the role they undertake by undertaking appropriate training or professional development.</i>	R	A	G	G	G	R
	2.2. The Regulator should require TCSPs to have procedures in place to control recruitment practices regarding all individuals including Key Persons. The Regulator should require the TCSP to, prior to hiring an employee, give due consideration to an applicant's:					
2.2.1. <i>criminal records;</i>	G	✓	G	✓	G	✓
2.2.2. <i>regulatory censure;</i>	G	✓	G	✓	G	✓
2.2.3. <i>professional reprimands; and</i>	G	✓	-	✓	G	✓
2.2.4. <i>other formal censure, discipline or public criticism.</i>	G	✓	G	✓	G	✓
3.1. <i>The Regulator should require that a TCSP establishes and implements policies and procedures that require its employees, including Key Persons, to undertake an annual programme of training and professional development.</i>	G	✓	G	✓	G	✓

¹ This represents Cayman's current recruitment and selection standards framework prior to any proposed changes.

Bermuda

17. The Corporate Service Provider Business Act 2012² details the requirements of probity, competence, and soundness of judgment of an employee.
18. The Bermuda Monetary Authority's Code of Practice for Trust Business³ requires Trust businesses to have suitable numbers of staff who are appropriately trained and competent to discharge its fiduciary duties effectively, and for staff to receive the necessary training appropriate for their roles. It also stipulates a requirement to formulate and keep up-to-date plans for staff training and development.

British Virgin Islands ("BVI")

19. The BVI's Regulatory Code and the Anti-Money Laundering and Terrorist Financing Code of Practice ("AMLTCOP")⁴ require the TCSP to appoint competent persons to perform both prudential and Anti-Money Laundering and Countering the Financing of Terrorism functions. The *Regulatory Code* and the AMLTCOP impose requirements on the licensee to monitor its staff resource needs as well as the adequacy of the appointed staffing resource, with respect to the nature and size of the business.
20. There are also requirements on the licensee to ensure there are adequate and sufficiently qualified and experienced senior managers and other employees, periodically review their competence and establish and implement policies and procedures that require its employees to be adequately trained and undertake sufficient professional development.

Guernsey

21. The Guernsey Code of Practice for Trust Service Providers⁵ and the Code of Practice for Company Service Providers⁶ recommend that TCSPs have effective management and systems and suitably chosen, trained and supervised staff. TCSPs should ensure that staff receive any necessary training for their roles, as well as formulate and keep up-to-date plans for staff training and development.
22. The Code of Practice for Company Directors⁷ further outlines expectations for persons providing directorships.

Isle of Man

23. The Training and Competence Framework⁸ stipulates that a regulated entity should ensure that employees are competent to perform their role, they remain competent, they are appropriately supervised, their competence is regularly reviewed, and the level of competence is appropriate to the nature of the business. Furthermore, the regulated entity must ensure that individuals providing services to the regulated entity are competent for the tasks they perform.

² [Bermuda Corporate Service Provider Business Act 2012 Code of Practice, September 2019](#)

³ [Bermuda Trusts \(Regulation of Trust Business\) Act 2001 Code of Practice, December 2019](#)

⁴ [British Virgin Islands Regulatory Code, 2020](#)

⁵ [Guernsey Code of Practice – Trust Service Providers, 2009](#)

⁶ [Guernsey Code of Practice – Corporate Service Providers, 2009](#)

⁷ [Guernsey Code of Practice – Company Directors, 2009](#)

⁸ [Isle of Man Training and Competence Framework, 2022](#)

24. The Isle of Man Regulatory Guidance – Fitness and Propriety⁹ states that individuals accepted for Controlled Functions positions should be subject to a criminal record check, and past actions or conduct should be used to determine integrity.
25. Furthermore, the Anti-Money Laundering and Countering the Financing of Terrorism Code 2019¹⁰ advises that regulated entities are to provide or arrange education and training, including refresher training, on their anti-money laundering arrangements at least annually.

Jersey

26. The Code of Practice for Trust Companies¹¹ stipulates that its trust company business employees should collectively have a balance of qualifications necessary to fulfil their technical functions and suitable skills and experience to fulfil their non-technical functions. The Code also specifies that CPD is compulsory for all trust company business employees.
27. The Code further requires that a registered person of a Trust Company Business ensures there is adequate supervision of direct and indirect employees.

G. Cost and Benefit Analysis

28. The following table shows the significant costs and benefits associated with the issuance of the proposed RSOG on the Recruitment and Selection for TCSPs.

Table IV – Cost Benefit Analysis

	Costs	Benefits
CIMA	<ol style="list-style-type: none"> 1. CIMA will incur the usual administrative costs associated with publication of the revised measure and amending internal supervisory manuals. 2. Training staff on the revised contents of the new measure and internal manuals and procedures. 3. Processing amendments to the existing measure and conducting consultation and reviewing feedback. 4. Offsite and onsite procedures may have to be refined to be aligned with identifying and taking action in response to breaches of rules. 	<p>The Authority stands to benefit from:</p> <ol style="list-style-type: none"> 1. Improved compliance by supervised entities with the measure, given the role enforceable rules play in dissuading non-compliance. 2. The amendments to the existing measure will provide clarity and certainty on the obligations of TCSPs in respect of recruitment and selection standards for TCSPs. 3. The proposed RSOG will provide the enforcement framework for the supervision of TCSPs as promulgated by the GIFCS Standards. 4. Strengthened regulatory/supervisory framework for the TCSP sector in support of CIMA’s mandate.

⁹ [Isle of Man Regulatory Guidance – Fitness and Propriety, 2023](#)

¹⁰ [Isle of Man Anti-Money Laundering and Countering the Financing of Terrorism Code, 2019](#)

¹¹ [Jersey Financial Services \(Jersey\) Law 1998 Code of Practice For Trust Company Business](#)

	Costs	Benefits
Cayman Islands	<p>1. There is always a risk that some entities will opt to leave the jurisdiction rather than comply with newly instituted obligations; however, this is expected to be minimal since the expectations regarding recruitment and selection standards are already set out in the existing guidance.</p>	<p>The jurisdiction stands to benefit from:</p> <ol style="list-style-type: none"> 1. Enhanced jurisdictional profile as an international financial centre as it aims for improved compliance with international guidance from GIFCS relating to best practices on recruitment and selection standards. 2. The proposed RSOG will safeguard the jurisdiction's reputation through minimization of risks associated with weak recruitment and selection standards regulations for TCSPs. Such risks include conduct risk, conflict of interest, and unlawful access to client's details. 3. The recruitment and selection rules in the proposed RSOG will support directors in making more informed recruitment and CPD decisions through the provision of adequate recruitment policies and procedures, training and appropriate supervision. 4. The jurisdiction can expect to receive improved results in international assessments and evaluations with greater clarity surrounding the enforceability of the requirements established in the proposed measure (i.e. GIFCS assessments).
TCSPs	<p>1. Regulated persons may incur compliance costs, relating to the implementation of required training programmes. However, most requirements in the proposed RSOG are currently set out in the SOG-Recruitment and Selection Standards for TCSPs. It is, therefore, unlikely that the proposed amendments would add any material costs.</p>	<ol style="list-style-type: none"> 1. TCSPs will benefit from greater clarity and lessened ambiguity surrounding their obligations as they relate to recruitment and selection standards. 2. Increases certainty relating to on-site inspections and CIMA's expectations. 3. The rules will support the mitigation of risk of regulatory breaches from inadequate recruitment and training policies and procedures which leaves a TCSP open to fines and other penalties as well as reputational damage. 4. TCSPs will benefit from the positive spill-overs associated with increased client confidence emanating from the fact that potential key persons will be better vetted and current key persons will be better trained. This will result in positive knock-on effects on employee

	Costs	Benefits
		satisfaction and overall TCSP performance.
Summary	Consequent to the above, it is determined that the benefits outweigh the costs and the issuance of the RSOG, and therefore should be pursued by the Authority.	

H. Consultation Feedback and Comments

29. Before proceeding with the proposed measure, the Authority shall have regard to any representations made by the private sector associations only. Feedback submitted by individuals, entities, or other bodies, unless acting on behalf of private sector associations, will not be accepted by the Authority. Representations from private sector associations must be submitted as a consolidated document, and a listing of the entities which provided feedback should be included. Private sector associations should ensure that conflicting positions are resolved prior to submission to the Authority. Where positions conflict within or across associations, the Authority will consider all available information in taking a decision, which will be at its sole discretion.
30. To ensure that all responses are given due consideration, it is important that private sector associations make clear reference to the sections of the measure being commented on, and that responses are unambiguous, clearly articulated and based on fact. The consultation process is not designed to address complaints or grievances. Feedback of this nature should be submitted through the established complaints process.
31. In cases where the feedback proposes to change a policy position of the Authority or substantially amend any requirement of the draft measure, information to support the position of the association must be provided. The table below provides an example of the Authority's expectation with regard to feedback for the proposed measure.

Reference	Example of a Helpful Comment	Examples of Comments needing more Support
Rule 4.2 ¹²	<p>In Rule 4.2 the current text omits the fair value measurement of liabilities. Also, as defined it is not asymmetrical with the Market Price definition and thus scenarios exists that fall into neither category.</p> <p>Suggested wording: <i>Hard-to-Value Securities means an asset or liability for which there is no Market Price which is required to be measured at fair value pursuant to 5.2</i></p>	<ul style="list-style-type: none"> × This is not what is done in other jurisdictions. × I don't think we should do this. × CIMA is not considering the position of the experts.

¹² This example is not reflective of the content of the proposed measure.

32. All feedback submitted by private sector associations will be given due consideration, nevertheless, the decision to adopt any feedback provided into a proposed measure will be at the sole discretion of the Authority.

I. Notice of Representations

33. The Authority seeks consultation through written comments and representations from the private sector associations concerning the:

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Standards for Trust and Corporate Service Providers and Company
Managers**

34. The Authority must receive representations by 1700hrs on **March 25, 2024**. Representations received after this deadline may not be considered and will not form part of the collated written response provided to private sector associations.
35. Comments and representations must be addressed to¹³:

The Managing Director
Cayman Islands Monetary Authority
P.O. Box 10052
SIX, Cricket Square
Grand Cayman KY1-1001
Cayman Islands
Tel: 345-949-7089
Fax: 345-946-5611
Email:
consultation@cima.ky
and copied to sydoniebarrett@cima.ky

36. 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.

¹³ Where the private sector association or industry stakeholder has no comments or representations on the proposed measure, it is recommended that the Authority be informed of this fact.



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