

Cayman Islands Monetary Authority

SUMMARY OF PRIVATE SECTOR CONSULTATION AND FEEDBACK STATEMENT



STATEMENT OF GUIDANCE ON RECRUITMENT AND SELECTION OF EMPLOYEES FOR TRUST AND CORPORATE SERVICE PROVIDERS

Section of proposed Measures	Industry Comment	Authority's response	Consequent amendments to the draft Requirements
General question	How will this be measured and enforced? Will there be any interaction with the Fines Regime?	<p>The Authority will assess, measure and enforce the licensee's adherence to the SOG on the Recruitment and Selection of Employees for Trust and Corporate Service Providers in the same manner the Authority assesses all other regulatory measures i.e. onsite inspection, desk based reviews etc.</p> <p>With respect to the fines, currently there are no administrative fines for breaches of Rules and SOGs. If the regime changes, the Authority will communicate this at that particular time.</p>	No action required.
Section 3.1	Section 3.1 indicates the applicability of the SOG to private trust companies ("PTCs"). The concern is that these companies are primarily family offices and the senior positions held are held by	The Authority agrees that Private Trust Companies fall outside the scope of this SOG. The Authority will remove Private Trust Companies from the scope of this	<p>The Authority will amend Section 3.1 to state the following:</p> <p><i>3.1 This Guidance applies</i></p>

	family members who may not have the same qualifications or experience of a licensed trust company. Any risk is limited to the family/individual, which the employee is related to and so other provisions should be made for these cases. Otherwise, the recommendation is being made to exclude PTCs from this SOG entirely.	measure.	<p><i>to:</i></p> <ol style="list-style-type: none"> <i>a. Trust Companies licensed or registered under the Banks and Trust Companies Law; and</i> <i>b. Company</i> <i>c.</i>
Section 5.1.1	Section 5.1.1 – It is not clear if entities that are part of a group that use a group HR structure, can rely on group policies or if they must adopt one of their own. Maintaining local policies where recruitment is handled through a centralized function within a large organization will be challenging and redundant. Perhaps the Authority would be willing to consider amending the SoG to account for this scenario?	The Authority acknowledges that regulated entities that are part of a group may be subject to group-wide recruitment practices. However, the Authority considers it important for each entity in a group structure that is a separate legal entity, to adopt policies and practices that meet the objectives of this Statement of Guidance. It is also expected that these policies and practices are appropriate for the particular operations of that legal entity, which may be achieved by adopting the group-wide standard.	The Authority will amend the SOG Section 3.3 to include a paragraph explaining its expectations for group entities.
Section 5.1.2	Section 5.1.2 was expanded after the word “employment” to include “or functions within the licensee”.	The Authority agrees and will amend the section.	The Authority to amend section 5.1.2 to state the following: “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 or functions within the Licensee.”
Section 5.1.2 (2)	Section 5.1.2 (2) – Oversight of a fair and transparent recruitment and selection process would seem to fall more within the Labour Board’s purview than that of the Authority. Is it that the Authority envisions itself taking an ombudsman position in the future and if so, will there be further guidance on what to expect?	<p>The requirements outlined in Section 5.1.2 (2) are general and do not stipulate any criteria for the determination of what constitutes fair and transparent recruitment and selection practices, nor do they imply that the Authority will be supervising TCSPs recruitment and selection practices. The requirement is simply that the TCSP documents its commitment to fairness and transparency in its policy. At the time of inspection, the Authority will assess whether the licensee’s policy meets the expectations outlined in the SOG.</p> <p>Above all, Section 34 of the Monetary Authority Law gives the Authority the power to issue statements 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. Further the Group of International Finance Centre Supervisors’ (“GIFCS”) Standard on the Regulation of Trust and Corporate Service Providers (“SRTC”) Part 3 A(6) encourages authorities to require TCSPs to remain resourced, structured and organized appropriately. This requirement addresses policies, procedures, controls, staff</p>	No action

		capabilities etc.	
Section 5.1.3	Section 5.1.3 was expanded after the word “realities” to include “and industry developments”.	The Authority agrees and will amend the section.	The Authority to amend section 5.1.3 to state the following: “Recruitment policies and procedures should be periodically reviewed and updated to ensure that they continue to align with business and staffing realities and industry developments.”
Section 5.1.4	The following amendment to Section 5.1.4 was proposed: “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 <u>experience to be successful required</u> for in the role.”	The Authority has noted the change.	The Authority will amend as recommended.
Section 5.1.5	The following amendment to Section 5.1.5 was proposed: “Licensees should ensure that candidates offered employment contracts are well-suited competent 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’ a <u>candidate’s</u> experience, qualification, knowledge and skills meets 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 <u>candidate</u> ”	The term “candidate” has been used in previous sections of the SOG. Therefore, the Authority will amend for consistency.	The Authority will amend as recommended
Section 5.2.5	Section 5.2.5 – Reporting relationships	The Authority expects TCSPS to	The Authority to amend section

	and escalation processes are usually discussed at a high level in policies with specifics covered in an employee’s JD and org chart. If specifics are to be outlined in policy, it will be difficult to maintain as the policies will have to be updated on each new hire. Additionally, it would materially complicate the recruitment process where recruitment is centralized in large organizations.	have documented policies and procedures regarding its recruitment and selection processes and practices. Those policies and procedures should only address overarching reporting lines and escalation processes. The Authority does not expect TCSPs to delineate each specific employee's reporting chain in its policy. However, we expect TCSPs’ policies to address overarching reporting chains and processes for escalation at a high level. The Authority will amend the section for clarity.	5.2.5 to state the following: “Policies and procedures should be in place that clearly outline overarching reporting relationships and escalation processes. These policies and procedures should be well documented and communicated to staff”.
Section 6	Section 6 – This section seems to allude to the CML being responsible for the inactions/failure of a Director where the DRLL places that liability on the Director. If the Authority places this obligation on the CML, what is the parallel for those independent directors who are offering their service outside of a CML? Perhaps the right approach would be to create a SoG to support the DRLL?	Section 6 of the SOG requires CMLs to ensure that directors or alternate directors understand their fiduciary duties and responsibilities. This is a reasonable requirement as the licensee should have mechanisms i.e. documented policies and procedures that communicate its expectations for employees that act as director. This is especially necessary for new employees. The SOG contains no language to suggest that the CML is responsible for the failure/inaction of a director. Further, points (a) – (e) of Section 6.1 only reinforce the expectations of Directors currently outlined in Section 5.5 of the SOG for Corporate Governance, issued in February 2016, which is applicable to all regulated entities including TCSPs.	No action required.
Section 6.1	It was recommended in Section 6.1 (a)-(e) to replace the occurrences of	The Authority agrees that the term “company” should be changed to	The Authority will amend as recommended

	"company" with "client".	"client". The Authority will amend Section 6.1 (a) – (e).	
Section 7	<p>Section 7 implies that TCSP profession mandates CPD accreditation for all employees. We recommend that such requirements be limited to those employees that are member of associations (e.g. STEP) or professionals (e.g. lawyer or accountant), which require such accreditation for ongoing membership or qualification.</p> <p>Perhaps the wording can be adjusted to reflect that a Licensee should ensure that employees are pursuing ongoing training and CPD requirements. Otherwise, the section could be interpreted to mean that the training requirements are to be detailed in the policies. Logistically, the policy would have to be updated at the end of the year for the upcoming year. Changes in the financial services industry are dynamic and rapid, as a result a subject matter that was not relevant last year becomes relevant this year. The end result being that policies would have to be updated on a regular basis within the year.</p>	<p>In the SOG the term Continuing Professional Development ("CPD") refers to the broad spectrum of ongoing training and development activities undertaken by employees. The definition of CPD outlined in section 4 states that "CPD encompasses a wide range of company-developed ongoing training regimes and external training and development courses offered to professional with a view to maintain and/or enhancing their knowledge and skills." It is not limited to specialized training in relation to trust and corporate services or accredited designations. Furthermore, section 2.1.4 of the Group of International Finance Centre Supervisors Standard on the Regulation of Trust and Corporate Service Providers recommends that regulators require TCSPs to ensure that all employees remain competent for the role they undertake by undertaking appropriate training or professional development.</p> <p>Where an employee holds a professional qualification, designation, or is a member of a professional body or association that requires the completion of a certain number of CPD hours, licensees may give credit to that employee's professional development hours, earned in meeting the CPD obligations of their qualification or membership, towards meeting the minimum</p>	<p>The Authority to amend section 7.6 to state the following: "Where a licensee's employee holds a professional qualification, designation, or is a member of a professional body or association that requires the completion of a certain number of CPD hours, licensees should ensure that employees comply with such CPD requirements. Licensees may give credit to an employee's professional development hours, earned in meeting the CPD obligations of their qualification or membership, towards meeting the minimum number of training hours specified in the licensee's own CPD Policy."</p>

		<p>number of training hours specified in the licensee’s own CPD Policy. The Authority will amend section 7.6 to ensure clarity of the Authority’s expectations.</p> <p>The SOG requires TCSPs to set out in policy the ongoing training and CPD requirements for employees. We expect the policy to be the overarching guideline by which the licensee operates. It is also the Authority’s expectation that the policy will reviewed periodically to determine whether the policy continues to meet the training needs of employees.</p>	
Section 8.2(a)	<p>The following amendment to Section 8.2 (a) was proposed:</p> <p>8.2 CPD activities may include a varied mix of the following:</p> <p>(a) Training courses and activities provided by the regulated—entity <u>licensee</u></p>	The Authority agrees and will amend the section.	<p>The Authority will amend Section 8.2 (a) to state the following:</p> <p>“8.2 CPD activities may include a varied mix of the following:</p> <p>Training courses and activities provided by the licensee.”</p>
Section 8.2.1	<p>The following amendment to Section 8.2 (a) was proposed:</p> <p>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 <u>licensee’s</u> specific business operations:</p>	The Authority agrees and will amend the section.	<p>The Authority will amend Section 8.2 (a) to state the following:</p> <p>“8.2.1. Relevant CPD topics for employees should include (commensurate with the employee’s role and responsibilities), amongst other topics relevant to the licensee’s specific business operations:”</p>
Section 9.1	Section 9.1 is introducing concepts of Labour Law.	<p>Section 9.1 Section 9.1 is introducing concepts of Labour Law. Section 9.1, licensees already have an obligation to maintain appropriate records as required by the SOG on the Nature,</p>	No action

		<p>Accessibility and Retention of Records. The Authority has provided Section 9.1 as a guideline to what the Authority expects TCSPs to keep on file with respect to their recruitment and selection practices. At the time of inspection, the Authority will assess whether the licensee's record keep practices meets the expectations outlined in the SOG.</p> <p>Above all, Section 34 of the Monetary Authority Law gives the Authority the power to issue statements 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.</p>	
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