



# **REGULATORY POLICY**

## **Criteria for Approving Changes in Ownership and Control**

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## List of Acronyms

<b>CIMA</b>	Cayman Islands Monetary Authority
<b>IL</b>	Insurance Law
<b>FSP</b>	Financial Service Provider
<b>MAL</b>	Monetary Authority Law
<b>PEP</b>	Politically Exposed Person



## **Regulatory Policy**

### **Criteria for Approving Changes in Ownership and Control**

#### **1. Introduction**

- 1.1. This document establishes the Cayman Islands Monetary Authority's (the "Authority" or "CIMA") *Regulatory Policy on Criteria for Approving Changes in Ownership and Control* ("the Policy") of a Financial Service Provider ("FSP"). The Policy will be applied where any of the following enable the Authority to assess ownership and control:
- a) The Monetary Authority Law ("MAL");
  - b) The Regulatory Laws under the MAL;
  - c) The Anti-Money Laundering Regulations ("AMLRs");
  - d) All relevant legislation and regulations; and
  - e) All relevant regulatory instruments issued by the Authority.
- 1.2. The Policy should be read in conjunction with the –
- a) Regulatory Policy on Fitness and Propriety; and
  - b) Regulatory Procedure on Assessing Fitness and Propriety.

#### **2. Statement of Objectives**

- 2.1. This Policy establishes criteria to approve changes in ownership, and control pursuant to the Regulatory Laws.
- 2.2. The measure is consistent with the Authority's statutory objectives as prescribed in the MAL including:
- a) promoting and enhancing market confidence, consumer protection and the reputation of the Islands as a financial centre;
  - b) facilitating innovation in financial services business; and
  - c) recognising the desirability of facilitating innovation in financial services business.

#### **3. Statutory Authority**

- 3.1. As prescribed in section 3 of the MAL, the Authority shall, in determining whether a person is fit and proper, have regard to a person's –
- "(a) honesty, integrity and reputation;*  
*(b) competence and capability; and*  
*(c) financial soundness."*
- 3.2. This Policy is consistent with the Authority's statutory objective as prescribed in section 6(3)(b) of the MAL:
- "(b) to reduce the possibility of financial services business or relevant financial business being used for the purpose of money laundering or other crime."*
- 3.3. Section 6(1)(b) of the MAL provides the Authority's responsibility –



*"(ii) to monitor compliance with the anti-money laundering regulations (the AMLRs); and*

*(iii) to perform any other regulatory or supervisory duties that may be imposed on the Authority by any other law."*

#### 4. Scope of Application

4.1. The Authority will apply this Policy and the requirements of the Regulatory Laws in assessing all changes in ownership or control relating to:

- a) Transfers of shares in an FSP including in the context of acquisitions and mergers;
- b) Issuance of new shares;
- c) Ownership structures that are held by trusts and partnerships;
- d) Sole shareholder also acting as director in an FSP; and
- e) Familial shareholders acting as directors on the same FSP.

4.2. This Policy applies to all FSPs under the Regulatory Laws.

#### 5. Definitions

5.1. For the purpose of this Policy, the following definitions are provided:

5.1.1. **"Acquisition"** is a corporate action in which an entity or person buys most, if not all, of the target company's shares.

5.1.2. **"Control"** means an aggregate percentage of ownership that equals or exceeds 10.0 per cent of the issued shares of a Financial Service Provider, either directly or indirectly; or a right to exercise directly or indirectly 10.0 per cent or more of the of shares of a Financial Service Provider; or the ability to instruct or direct the directors of a Financial Service Provider.

5.1.3. **"Familial relationship"** means relationships between close family members, including husband, wife, parents, children, and siblings.

5.1.4. **"Financial Service Provider (FSP)"** means a person, licensee, registrant, or other entity subject to the Authority's regulatory functions under the Regulatory Laws or monitored by the Authority under the Anti-Money Laundering Regulations.

5.1.5. **"Merger"** is a combination of two companies to form a new company or merged into one surviving company.

5.1.6. **"Person"** refers to a natural person or legal person.

5.1.7. **"Politically Exposed Person (PEP)"** has the same meaning as that prescribed in the Anti-Money Laundering Regulations.



5.1.8. **“Share”**<sup>1</sup> is an interest owned by a member of a company.

5.1.9. **“Beneficial owner”** has the same meaning as that prescribed in the Anti-Money Laundering Regulations.

## 6. General Considerations

- 6.1. The Regulatory Laws, with the exclusion of the Private Funds Law, prohibit the dealing, issuance, transfer, or disposal of an FSP’s shares without the Authority’s prior approval. Issued shares of an FSP shall not be transferred or disposed of without the Authority’s prior approval.
- 6.2. In cases where shares of an FSP are transferred (e.g. by testamentary disposition or intestate succession), the transferee must contact the Authority. The Authority will consider the change of shareholder in accordance with this Policy.
- 6.3. Where an FSP pledges its shares as security, the Authority’s prior conditional approval of the transfer of shares to the secured party must be sought before the shares are pledged. If the secured party later realizes on the collateral, the shares will be transferred to the secured party with only a notification required to the Authority.
- 6.4. Before a share transfer can be considered for approval by the Authority, persons acquiring ownership of 10.0 per cent or more of an FSP must submit a Personal Questionnaire together with the documentation listed in the *Regulatory Procedure on Assessing Fitness and Propriety*, in addition to any other documents required to assess the transfer of shares in accordance with this Regulatory Policy. This requirement also applies to the acquisition of any number of shares that will result in a shareholder owning 10.0 per cent or more of an FSP’s shares or give the shareholder control of an FSP regardless of the amount of shares gained in the transaction.
- 6.5. All criteria listed in this Regulatory Policy applies to a change in direct and beneficial ownership of an FSP. This means all criteria apply to changes at the level of the FSP, its parent, or any entity directly or indirectly owning the parent.
- 6.6. The Authority will not approve a proposed change in ownership or control where a person is not found to be fit and proper.
- 6.7. The Authority may take action if a change in control or ownership has taken place without the necessary approval being sought from the Authority.

## 7. FSPs Whose Shares are Listed on a Stock Exchange

- 7.1. The Regulatory Laws allow the Authority to waive the requirement for FSPs to obtain the approval referred to in section 6.1.1 if shares or interests of the FSP are publicly traded on a stock exchange approved by the Authority<sup>2</sup>.

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<sup>1</sup> Where the FSP is a partnership, partnership interest is equivalent to shares in a company.

<sup>2</sup> see the Regulatory Policy on Approved Stock Exchanges.

- 7.2. Shares or interests of the FSP that are publicly listed and traded on a stock exchange approved by the Authority are exempt from prior approval by the Authority under paragraph 6.1. The Authority will not waive the requirement for approval on any shares/interest that are not listed on an approved stock exchange. The Authority generally allows a similar exemption from prior approval in relation to the listed shares of the parent body of an FSP
- 7.3. The Regulatory Laws contain conditions that must be followed by the FSP when it avails itself of the exemption described in 7.1 above. When approval of a share transfer is required notwithstanding the exemption, for example, if there is a change of control of the FSP, the Authority will apply all criteria described in section 9 when assessing whether approval should be given.
- 7.4. FSPs are expected to notify the Authority in a timely manner if they rely on an exemption under the Regulatory Laws.

## **8. Timelines**

- 8.1. The approval process can take several weeks from the date a complete application is received by the Authority. Applicants are expected to submit their applications in advance of scheduled dates relating to the closing of the proposed transaction.

## **9. Conditions/Criteria for Approval**

### ***General Criteria***

- 9.1. In all cases, the Authority will assess whether:
  - 9.1.1. The proposed share transfer poses an undue risk to the public interest, the financial system or the reputation of the jurisdiction;
  - 9.1.2. The proposed share transfer will prejudice the interests of depositors, policyholders, investors, clients, or creditors as the case may be;
  - 9.1.3. The new corporate structure of the FSP is transparent and not hinder effective supervision by the Authority. The Authority must be able to identify the beneficial owner(s) of the FSP. If an FSP's proposed corporate structure is complex, the FSP must explain and justify the rationale for its complex structure to the satisfaction of the Authority;
  - 9.1.4. Where the proposed shareholder acquires 10.0 per cent or more of the shares of an FSP, the proposed shareholder has the necessary resources to provide on-going financial support to the FSP;
  - 9.1.5. Corporate affiliations or structures expose the FSP to undue risk;
  - 9.1.6. Cross border operations will hinder effective consolidated supervision by the Authority;
  - 9.1.7. Where the FSP's direction and/or management changes as a result of the share transfer, the transferee has sufficient expertise to carry on the

business of the FSP or demonstrates that the business of the FSP will be carried on by persons who have sufficient expertise and who are fit and proper persons to carry on such business; and

- 9.1.8. In cases where the proposed shareholder is itself, or is ultimately owned by persons, based in countries that the Authority believes do not have a framework for anti-money laundering and counter-terrorism financing that is at least equivalent to the standards that apply in the Cayman Islands, the application may be subject to heightened scrutiny.

### **Share Transfers**

*This section applies to a proposed transfer of shares that would not result in the acquiring party acquiring ownership and/or control in an FSP. This section also applies to the issuance of new shares in an FSP that does not result in the acquiring party acquiring ownership and/or control in an FSP. In addition to all conditions and criteria for approval provided under section 9.1 (General Criteria), the Authority may apply, at its discretion, the considerations listed in sections 9.2 and 9.3. The Authority reserves the right to request any information it deems necessary to satisfy itself regarding all criteria set below.*

#### **Individual Shareholders**

- 9.2. The Authority, in assessing the application, will seek to determine:
- 9.2.1. Whether the proposed shareholder has been sanctioned by a financial services regulator or convicted of a criminal offence.
  - 9.2.2. The proposed shareholder appears on a list of sanctions issued by an international organization.
  - 9.2.3. Whether a person is a PEP.

#### **Corporate Shareholders**

- 9.3. The Authority, in assessing the application, will evaluate:
- 9.3.1. Whether the FSP or an entity in the corporate group has been fined, sanctioned or has been the subject of any settlement in civil proceedings;
  - 9.3.2. Whether the legal entity, if an FSP, is in good standing i.e. up to date with fees and audited financial statements as well as other administrative filings;
  - 9.3.3. The Authority's ability to supervise the proposed group structure and, if the acquiring entity is regulated as a financial services provider in a foreign jurisdiction, the ability of the foreign regulator to conduct consolidated supervision of the group that will include the FSP;
  - 9.3.4. Any risks of non-compliance with regulatory or anti-money laundering requirements that could increase as a result of the share transfer;



9.3.5. Whether the proposed transaction will detrimentally impact the good standing of the FSP; and

9.3.6. Whether the proposed shareholder appears on a list of sanctions issued by an international organisation.

### ***Changes of Control, Acquisitions and Mergers***

9.4. Section 9.4 applies to the transfer of more than 10.0 per cent of the shares of an FSP, including cases where the FSP will be merged with another entity. Where an acquiring person or entity purchases a majority or a controlling stake in the FSP, the Authority will evaluate, amongst other criteria –

9.4.1. The fitness and propriety of the proposed shareholder;

9.4.2. The proposed shareholder's source of funds and source of wealth in the Authority's absolute discretion;

9.4.3. The fitness and propriety of the directors, senior officers, managers and shareholders of the entity with which the FSP is to be merged where these persons will continue to be involved with the FSP;

9.4.4. The Authority's ability to supervise the proposed group structure and, if the person acquiring is regulated as an FSP in a foreign jurisdiction, the ability of the foreign regulator to conduct consolidated supervision of the group that will include the FSP;

9.4.5. Whether the proposed shareholder has been denied permission to establish financial institution(s) or engage in relevant financial business in the past in any jurisdiction;

9.4.6. Any integration of the proposed shareholder businesses and operations with those of the target FSP, including the integration of the financial services provided by the FSP with the other business of the acquiring entity;

9.4.7. Whether the proposed changes to the FSP's business plan are sound and feasible; and

9.4.8. Whether the interests of depositors, policyholders, investors, clients, creditors, or the public would be negatively impacted by the proposed acquisition or merger. In forming this view, the Authority will consider factors that include but may not be limited to:

- a) the proposed shareholder's ability to fund the acquisition or merger;
- b) the proposed shareholder, where an FSP, is adequately capitalized under the regulatory framework of its home jurisdiction;
- c) the proposed shareholder's financial soundness and ability to inject capital, if needed, into the FSP;



- d) the managerial capacity of the proposed shareholder to ensure that the activities of the FSP are conducted in a prudent and reputable manner;
- e) the business and financial track record and experience of the proposed shareholder; and
- f) any undue risk to which the FSP may be exposed arising from the acquisition, including increased risk of non-compliance with regulatory standards.

### ***Ownership Structures That are Held by Trusts***

9.5. Where the entity acquiring control or ultimate beneficial ownership of an FSP is a trust, the Authority will evaluate:

- 9.5.1. The general nature of the trust, its purpose and source of funds and source of wealth in its absolute discretion;
- 9.5.2. The fitness and propriety of the beneficiaries (where appropriate), the trustee, protector (if any), the settlor or person(s) that may influence or have the power to make decisions with respect to the trust;
- 9.5.3. Whether the trustee is regulated in a country satisfactory to the Authority, if outside of the Cayman Islands, and if regulated, whether the trustee is in good standing;
- 9.5.4. Whether the governing laws of the trustee and the trust allow unfettered regulatory access by the Authority to all matters pertaining to the governance of the trust;
- 9.5.5. Whether the trustee can access the funds in the trust to inject capital into the FSP when needed; and
- 9.5.6. When the provisions of the trust allow the legal ownership of the shares to be transferred from the trust to the beneficiaries, the share transfer, or the transfer of any shares of a holding company within the trust structure that holds shares of an FSP, will be subject to approval by the Authority in accordance with this Policy.

### ***Ownership Structures That are Held by Partnerships***

9.6. Where the entity acquiring control or ultimate beneficial ownership of an FSP is a partnership<sup>3</sup>, either directly or on behalf of a person or group of persons, the Authority, in assessing the application, will evaluate:

- 9.6.1. The activities of the partnership, its purpose and source of funds and source of wealth in the Authority's absolute discretion;

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<sup>3</sup> Under section 28(2) the Virtual Assets Service Providers Law, partnership interest is equivalent to shares in a company.



- 9.6.2. The fitness and propriety of the general partner, limited partner(s) and other persons that may have influence or have the power to make decisions with respect to the partnership;
- 9.6.3. If carrying on regulated activities, whether the partnership is regulated in a country satisfactory to the Authority, if outside of the Cayman Islands, and if regulated, whether the partnership is in good standing; and
- 9.6.4. The ability and assurance from the General Partner to provide financial support to the FSP when needed.

***Ownership Structures Involving a Sole Shareholder and Familial Shareholders Acting as Directors on Same Licensee***

- 9.7. The Authority, in assessing the application, will evaluate –
  - 9.7.1. Whether a succession plan has been developed to minimise the disruption of the FSP’s operations in the event the sole shareholder dies or becomes incapacitated;
  - 9.7.2. Whether the sole shareholder or familial shareholder(s) is/are able to make future capital injections into the FSP if necessary;
  - 9.7.3. Whether independent directors who do not have a familial relationship with the parties have been or will be appointed;
  - 9.7.4. Whether internal controls<sup>4</sup> will be in place to prevent sole shareholders or familial shareholders from making unfettered decisions that will prejudice depositors, policyholders, creditors, investors, clients, or the public interest; and
  - 9.7.5. Whether an adequate corporate governance structure will be in place to promote objective decision making in the best interests of the FSP.

***Aggregate Shareholdings***

- 9.8. To determine the amount of shares a person or entity owns in an FSP, the Authority will aggregate all the holdings of that person or entity in whatever manner such shares are held, whether such shares are owned directly or through one or more intermediate companies, or a combination thereof.
- 9.9. When seeking approval for a change of shareholdings, an FSP must submit information on all direct and indirect ownership holdings in the FSP or FSP’s group, pre and post-transaction. Ownership structure charts including all subsidiaries, trusts companies, holding companies and nominee companies within the group structure must accompany the application. Percentage holdings for each owner must also be specified.
- 9.10. In certain cases, the Authority may aggregate the proposed non- controlling shareholdings of persons it has reason to believe are acting in concert, that is,

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<sup>4</sup> Applicants should refer to the ‘Rule on Internal Controls on General For all Licensees’ issued by the Authority.



they are knowingly participating in a joint activity to acquire control of an FSP. If the Authority has reason to believe that such persons are acting in concert, the Authority may review the application using criteria under section 9.4 (*Changes of Control, Acquisitions and Mergers*), section 9.5 (*Ownership Structures that are held by Trusts*), or section 9.6 (*Ownership Structures that are Held by Partnerships*), as applicable, in addition to criteria listed under 9.2 (*Individual Shareholders*) and 9.3 (*Corporate Shareholders*).

## **10. Ongoing Conditions**

- 10.1. Shareholders and ultimate beneficial owners should act with integrity at all times. If any of these persons are involved with the FSP as directors, senior officers, trustees, or managers, they must be competent individuals and have the relevant knowledge, skill, and expertise to function in their respective capacities.
- 10.2. If the Authority determines that the approval for the change in shareholdings was based on false or misleading information, the Authority may reject or rescind the approval of change in shareholdings.
- 10.3. If the FSP becomes aware of any material information that may negatively affect the suitability of a shareholder or a party that has a controlling interest of the FSP, the Authority should be notified immediately.



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