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## **Statement of Guidance**

### **Market Conduct: Trust and Corporate Services Providers**

#### **1. Statement of Objectives**

- 1.1 This Statement of Guidance ("Guidance") provides guidance to Trust and Corporate Services Providers relating to market conduct.
- 1.2 This Guidance is not intended to be prescriptive or exhaustive; rather this Guidance sets out the Cayman Islands Monetary Authority's ("the Authority") minimum expectations relating to the market conduct of Trust and Corporate Services Providers.
- 1.3 The Guidance aims to help ensure the fair treatment and general protection of Clients in relation to the business of company management and trust business.

#### **2. Statutory Authority**

- 2.1 Section 34 of the Monetary Authority Law provides that the Authority:  
*(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 laws may apply;*
- 2.2 This document establishes the Guidance on market conduct for Trust and Corporate Services Providers and should be read in conjunction with (a) the Statement of Guidance Outsourcing: Regulated Entities, (b) the Statement of Guidance: Professional Indemnity Insurance for Trust, Insurance, Mutual Fund Administrator, Securities Investment Business and Company Management Licensees and Directors and (c) the Policy: Marketing Policies Of Licensees, as well as any other relevant business conduct related measure issued by the Authority.

#### **3. SCOPE OF APPLICATION**

- 3.1 This Guidance applies to:
  - a) holders of Trust Licences, Restricted Trust Licences and Nominee



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Trust Licences that have been issued under the Banks and Trust Companies Law ("BTCL")<sup>1</sup>; and

- b) Companies Management Licences and Corporate Services Licences that have been issued under the Companies Management Law ("CML").

3.2 The Authority will assess Licensees' compliance with this Statement of Guidance in a proportionate manner relative to their nature, scale, and complexity.

#### **4. Definitions**

4.1 For the purpose of this Guidance, the below definitions are provided.

- a) "**Client**" refers to a person with whom a Licensee has entered an agreement to provide services constituting trust business or company management business.

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

- b) "**Client money**" includes money that Licensees hold or receive on behalf of a Client or owe to a Client.
- c) "**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 Licensee, which alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience.
- d) "**Companies Management Licensee**" refers to a Licensee holding a licence under section 5(2)(b) of the CML.
- e) "**Corporate Services Licensee**" refers to a Licensee holding a licence under section 5(2)(a) of the CML.

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<sup>1</sup> **Excluded:** Private Trust Companies



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- f) **"Corporate Services Providers"** refer to Companies Management Licensees and Corporate Services Licensee.
- g) **"Licensees"** refer to Companies Management Licensees, Corporate Services Licensees, Trust Licensees, Restricted Trust and Nominee Trust Licensees.

## **5. Integrity**

- 5.1 Licensees should at all times conduct their business with integrity, honesty and communicate with their Clients in a clear and precise manner.
- 5.2 A Licensee's relationship with its Clients should be one of trust and utmost good faith, acting in the best interests of its Clients, in accordance with the terms of the documentation governing their relationship. Any advice provided by a Licensee to its Clients, whether solicited or unsolicited, should be provided, objectively and independently, in their best interest.
- 5.3 Licensees should avoid unethical business practices and should not circumvent or contract out of the requirements contained within this Guidance.
- 5.4 Licensees should keep the affairs of Clients confidential except where disclosure of information is required or permitted by an applicable law or by guidance published by the Authority, or they are authorised by the person(s) to whom the duty of confidentiality is owed.
- 5.5 A Licensee should not represent to Clients or prospective Clients that its status as a Licensee indemnifies it against any liability that may arise as a result of the conduct of its business as a Licensee.

## **6. Fair Treatment of Clients**

- 6.1 A Licensee should always treat its Client fairly.
- 6.2 The Authority expects that Licensees will be and remain prudent and fair in their interactions with Clients.
- 6.3 A Licensee should act with due skill, care and diligence in the conduct of its business and to fulfil the responsibilities that it has undertaken.
- 6.4 A Licensee should ensure that adequate procedures are implemented to ensure that detailed robust reviews are conducted at appropriate intervals in respect of the trust business or company management business that it provides to its Clients.



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- 6.5 Corporate Services Providers should treat each Client's best interests as paramount subject to their legal obligations to other persons or bodies.
- 6.6 Trust, Restricted Trust and Nominee Trust Licensees should treat the interests of beneficiaries and/or purposes (as applicable) as paramount and should act impartially between beneficiaries subject to the terms of the trust and to their legal obligations.
- 6.7 Licensees should ensure that, where appropriate, they have a full understanding of the duties arising under the laws relevant to the administration and affairs of Clients for which they are acting in the jurisdictions in which business is being carried out and in which the assets being managed are held.
- 6.8 Decisions taken or transactions entered into by or on behalf of Clients, or in respect of client structures, should, within the scope of authority of the Licensee, be documented and actioned by Licensees in a timely manner, and should be properly authorised and handled by persons with an appropriate level of knowledge, experience and status.
- 6.9 A Licensee should seek from Clients it advises or for whom it exercises discretion any information about their circumstances and objectives which might reasonably be expected to be relevant in enabling the Licensee to fulfil its responsibilities to the Client.
- 6.10 A Licensee should transact its business (including the establishing, transfer or closing of business relationships with its Clients) in an expeditious manner.

## **7. Advice and Use of Discretion**

- 7.1 A Licensee should take reasonable steps to give a Client comprehensible and timely information needed to enable the Client to make a balanced and informed decision.
- 7.2 A Licensee should similarly be ready to provide a Client with a full and fair account of the fulfilment of its responsibilities to him.
- 7.3 Where a Licensee is responsible for exercising discretion for or in relation to its Clients, it should take all reasonable steps to obtain sufficient information in order to exercise its discretion or other powers in an informed manner. A Licensee should only exercise its power or discretion for a proper purpose and should be able to evidence, in writing, any decision made.



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## **8. Client Money and Assets**

- 8.1 Licensees should implement policies and procedures that ensure due care, skill and diligence is applied when administering and holding Client monies, which should include, inter alia:
- a) the requirement to hold Client monies in clearly segregated and distinct accounts from other Clients' accounts and any accounts of the Licensees' monies;
  - b) appropriate written disclosure to Clients of the terms upon which Client money is held;
  - c) the requirement for Client money accounts to be reconciled promptly by the Licensees;
  - d) requirements for appropriate authorisation and signing powers, at a minimum, dual signatures in the event of Client money payouts, subject to Client agreed terms and conditions; and
  - e) prevent the use of Client monies for the settlement of the Licensees' fees and disbursements, subject to Client agreed terms and conditions, and protect the Clients' assets from theft, fraud and other forms of misappropriation or inappropriate use.
- 8.2 Where a Licensee is responsible for administering or holding Client assets, the Licensee should develop appropriate documented policies and clear procedures that ensure:
- 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 Licensee; and
  - c) there are documented systems, controls and procedures to effectively reconcile any receipt or movement of assets of an entity administered by a Licensee.
- 8.3 A Licensee should have documented systems, controls and procedures governing sole, dual or multiple authorisations for handling its Clients' assets.
- 8.4 Trust, Restricted Trust and Nominee Trust Licensees should ensure that, in carrying out their duties as trustees, fiduciaries and/or administrators, they safeguard the assets of the trusts professionally and responsibly and act in the best interest of the beneficiaries and/or purposes (as applicable) and in accordance with the trust deed and applicable laws.

## **9. Resources**



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- 9.1 Licensees should establish and maintain appropriate policies, procedures and controls to monitor and ensure they always have the requisite capacity and resources to provide the services agreed with its Clients.
- 9.2 Any delegation of duties or powers, whether by power of attorney, formal agreement or otherwise, should only be entered into with an appropriate person for a proper purpose. The Licensee should:
- a) ensure any delegation is for a specific purpose;
  - b) where the delegation is irrevocable, include within the documentation either an expiry date, or a statement that the delegation will expire given specific circumstance(s) or action(s);
  - c) where the delegation is revocable, include within the documentation an expiry date or a requirement that the relationship with the appropriate person is formally reviewed on a periodic basis;
  - d) monitor the application of the power of attorney, formal agreement or other arrangement; and
  - e) ensure that appropriate due diligence has been carried out on the delegate.

## **10. Conflicts of Interest**

- 10.1 A Licensee should ensure that it has appropriate policies and well documented procedures to minimise and manage conflicts of interest and ensure the fair treatment of Clients.
- 10.2 A Licensee should make every effort to avoid any conflicts of interest. However, if a conflict arises, a Licensee should ensure fair treatment to all its Clients by disclosure, the application of its internal rules of confidentiality, declining to act, or otherwise as appropriate.
- 10.3 Where the interests of a Licensee conflicts with the interests of a Client, it should decline to act or, where possible in compliance with applicable fiduciary duties, withdraw from the relationship unless after full disclosure of the conflicting interests, all relevant parties including the Client, agree in writing that they should continue.
- 10.4 A Licensee should not unfairly place its interests above those of its Clients. Where a properly informed Client would reasonably expect the Licensee to place the Client's interests above its own, the Licensee should meet that expectation.



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**11. Terms of Business**

- 11.1 Licensees should enter into written terms of business with Clients for whom they have agreed to act.
- 11.2 A Licensee should ensure 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 Licensee will act for its Client.
- 11.3 A Licensee 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 the Client to make an informed decision before committing to the negotiated terms of business.
- 11.4 A Licensee should confirm the services that it is providing 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.
- 11.5 The terms of business for a Licensee should, inter alia include, :
  - 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 should 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 Licensee is licensed by the Authority; and
  - g) the Authority's contact details.
- 11.6 The agreed terms of business between a Licensee and its Client should also (as appropriate to the structure) ensure that the documentation:
  - a) be distinguishable from marketing or promotional material;
  - b) be consistent with the Guidance and other relevant measures as noted in 2.2 of this document;
  - c) be clearly expressed in plain language that only uses technical or legal terms where absolutely necessary;



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- d) 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 shall be provided at the earliest available opportunity;
  - e) explains whether the Licensee is acting as a principal or as the agent of the person to whom the service is provided or any other person;
  - f) sets out the terms on which money is held in those cases where the Licensee holds a Client's money; and
  - g) includes all appropriate information relevant to the service that will be provided.
- 11.7 Any special or non-standard fee arrangement must be established in writing.
- 11.8 Where a Licensee acts as a nominee shareholder to hold shares on behalf of another for the beneficial owner of a client structure, the Licensee should ensure that there is a written nominee agreement (or some other such document that forms a nominee agreement) that will identify the beneficial owner (a copy of which should be retained in its records).
- 11.9 Licensees 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.

## **12.Complaints Handling**

- 12.1 Licensees should establish an effective documented complaints handling system and procedures that allow for the timely, fair and just management of complaints.
- 12.2 Licensees should record, investigate and, as appropriate, act on complaints made against them or their employees.
- 12.3 Licensees should establish a suitable complaints record keeping system that includes the maintenance of a register to adequately document complaints noting such details as the complaint, date of complaint, agreed compensation, compromises, and status of the complaints.
- 12.4 Licensees are expected to inform Clients of how complaints may be made and how they may expect these to be responded to (see also section 11.5(d)).
- 12.5 The handling of complaints should be transparent, efficient, thorough, and impartial.





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- 12.6 Licensees should handle complaints in a fair and timely manner. Licensees should not unnecessarily delay responses to or resolution of complaints in an effort to frustrate the process or the Client.
- 12.7 Upon receipt of a complaint, Licensees should provide, in writing, in a reasonable time, unless expressly agreed by the complainant to the contrary, an acknowledgement that the complaint has been received and is being considered.
- 12.8 Licensees should reasonably keep the complainant informed about the progress of their complaint, including details of any actions being taken to resolve their complaint.
- 12.9 A Licensee should confirm to the complainant in writing when a complaint has been closed. If a Licensee 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.
- 12.10 A Licensee should review its complaints data for emerging patterns especially in consideration of updating or revising its market conduct related policies and procedures or its policies and procedures generally, where applicable.

## **13. Advertising and Communication**

- 13.1 A Licensee should take reasonable steps to ensure that its financial service advertisements (advertisements) are not misleading, false or deceptive.
- 13.2 A Licensee should ensure that its advertising and communication practices:
  - a) do not violate applicable laws;
  - b) do not violate standards of prudence and fairness;
  - c) are clear, ethical and not misleading;
  - 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 laws 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 jurisdiction at risk of being brought into disrepute.
- 13.3 Licensees should deal with Clients fairly and communicate information to them in a way which is suitable, sufficiently clear and not misleading.



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- 13.4 A Licensee should notify a Client if it is acting as agent or instructing an agent in relation to particular services.

#### **14. Directorship Services**

- 14.1 Where a Companies Management Licensee is acting as or fulfilling the function of or arranging for another person to act as or fulfil the function of director or alternate director of a company, the Companies Management Licensee:

- a) where it acts or arranges for another to act, should:
  - i. take reasonable steps to ensure that those persons acting as directors understand their obligations under the applicable laws including those laws of the jurisdiction(s) that are applicable to services requested by the Client;
  - ii. 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 (e.g. related parties of the Licensee that may also be providing services to the Client) and if any conflicts exist that they are disclosed the Client (see section 10);
  - iii. have appropriate policies and controls to properly assess and determine that those acting are fit and proper, suitable, competent, understand their duties and able to comply with the requirements of the relevant laws;
  - iv. not facilitate any arrangement that deliberately promotes the appointment of a "nominee" director. An appointed director must be aware that he has a duty to act in the best interests of the Client; and
  - v. 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 laws; 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.



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**15.Transitional Period**

- 15.1 New applicants should observe and apply this Guidance immediately upon publication.
- 15.2 Licensees holding a licence as of the date of publication should observe and apply this Guidance as soon as possible and no later than six months from the date that this Guidance is published, more specifically; this should only be with respect to those requirements that cannot reasonably be implemented immediately.
- 15.3 Licensees that already have business conduct policies and procedures in place should assess them against this Guidance and remedy any deficiencies within six months of the issue of this Guidance.
- 15.4 Licensees should not unnecessarily delay the implementation of this Statement of Guidance.