



PRIVATE SECTOR CONSULTATION
Rule and Statement of Guidance -
Market Conduct for Trust and Corporate
Services Providers and Company Managers

November 2023

Private Sector Consultation

Rule and Statement of Guidance - Market Conduct for Trust and Corporate Services Providers and Company Managers

(a) Introduction

1. Section 34(1)(a) of the Monetary Authority Act ("As Amended") ("the 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 ("CIMA" or "the Authority") seeks consultation and comment from the private sector associations concerning the **Rule and Statement of Guidance on Market Conduct for Trust and Corporate Services Providers and Company Managers** ("the RSOG") (attached as **Appendix 1**).

(b) Background

4. In March 2019, the Authority issued a ***Statement of Guidance ("SOG") on Market Conduct for Trust and Corporate Service Providers ("TCSPs")***, which provided explicit guidance to TCSPs on how to conduct their affairs in an appropriate manner by considering how they prevent conflicts of interest, advertise, and communicate with clients and the public, determine appropriate terms of business and handle complaints.
5. This SOG aligned with the Group of International Finance Centre Supervisors' ("GIFCS") Standards on the Regulation of Trust and Corporate Service Providers ("SRTCs" or "the Standards") and essentially strengthened consumer protection and minimised market conduct risks, due to adherence by the TCSP sector. However, upon evaluation against GIFCS Standards, an overall lack of enforceability of the measure as guidance was noted. The Authority also identified additional elements of market conduct by TCSP promoted by GIFCS, which would further support prudent industry practices and greater alignment with GIFCS Standards.
6. In order to enhance the Authority's regulatory function and oversight of TCSPs, and in preparation for any future evaluation against the GIFCS Standards, the Authority is proposing amendments to the existing SOG to incorporate rules that will address the overall lack of enforceability in the TCSP sector and improve compliance with GIFCS Standards. The proposed RSOG will cover the market conduct of TCSPs in the areas of integrity, fair treatment of clients, client money and assets, conflicts of interest, terms of business, complaints handling and advertising and communication *inter alia*.

(c) International Standards

7. GIFCS issued the SRTC in October 2014,¹ which is applicable to all its members. The SRTC sets out standards on the regulation of TCSPs against which jurisdictions and regulators may develop a comprehensive framework for the effective regulation and supervision of TCSPs and can measure related TCSP compliance.
8. The Standards are based on the following objectives:
 - customers of TCSPs should receive a degree of protection equivalent to that afforded to the customers of other financial institutions.
 - TCSPs should be subject to a similar regulatory regime as other financial institutions.
 - to be effective, standards should be applied internationally.
9. Part 3 of the SRTC governs the operations of licensed TCSPs by a regulator. This Part comprises ten (10) Standards divided into sub-standards on topics including licensing, controllers and key persons, conduct and corporate governance, and financial crime and international standards. The aforementioned standards and sub-standards constitute the minimum elements that should be present in an effective regulatory framework for TCSPs.
10. **Table 1** presents the relevant GIFCS standards on the Regulation of TCSPs and the accompanying sub-standards specific to market conduct elements.

¹ GIFCS first issued a Best Practice Statement on the supervision of TCSPs in 2002.

Table 1: Group of International Finance Centre Supervisors Standard on the Regulation of Trust and Corporate Service Providers – PART 3

Standard	Sub-Standards
<p><u>E - Control over Vehicles</u></p>	<p>2. Vehicle Assets</p> <p>2.1 This Standard is not intended to interfere with trust law; trust law is the responsibility of the Courts. It is the responsibility of the TCSP to ensure that, in carrying out its duties as a trustee, fiduciary and/or administrator, it fully complies with that law in all aspects of safeguarding the assets of the trusts and acts in accordance with the trust deed and always in the best interests of beneficiaries.</p> <p>2.2 The Regulator should require TCSPs to establish and document clear policies and procedures that ensure:</p> <p>2.2.1 they act with professional skill, care and diligence with regard to the administration of Vehicle assets;</p> <p>2.2.2 there is a segregation of Vehicle assets from those of the TCSP; and</p> <p>2.2.3 there is a reconciliation of any receipt or movement of assets of a Vehicle administered by a TCSP.</p> <p>3. Client Money Rules</p> <p>3.1 The Regulator should put in place rules for the administering of and holding of Client monies which at a minimum address:</p> <p>3.3.1 segregation of the Client monies from the monies of the TCSP;</p> <p>3.3.2 the requirement to hold Client monies in clearly separate and distinct accounts from any accounts of the TCSP’s own monies;</p> <p>3.3.3 the disclosure to Clients of the terms upon which Client money is held;</p> <p>3.3.4 the requirement for Client money accounts to be reconciled promptly by the TCSP;</p> <p>3.3.5 the requirement for the payment away of Client monies to be subject to a dual signature regime; and</p> <p>3.3.6 the establishment of policies, procedures and controls to prevent the inappropriate use of Client monies for the settlement of TCSP fees and disbursements.</p>
<p><u>F. Conduct</u></p>	<p>1. Integrity:</p> <p>1.1. The Regulator should require that a TCSP acts with integrity and fair dealing in the conduct of its business.</p>

2. Conflicts of Interest:

- 2.1. The Regulator should require that a TCSP's policies and procedures reflect its duty to Clients over the referrers of those Clients and maintain the highest standards of ethical behaviour in order to avoid conflicts of interest so as to always act in the best interests of the Client.
- 2.2. The Regulator should require that a TCSP has clearly established policies and documented procedures to either avoid any conflict of interest arising or, where a conflict arises, to keep adequate records of such conflicts and ensure fair treatment to its Clients by disclosure of the conflict, internal rules of confidentiality, declining to act, or otherwise.

3. Interaction with Clients:

- 3.1. The Regulator should require that TCSPs adopt and maintain prudent standards in its interactions with Clients, and further require that, inter alia, a TCSP should:
 - 3.1.1. ensure that, where appropriate, there is 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 they are carrying on business and in which the assets being managed are held;
 - 3.1.2. ensure that all decisions taken or transactions entered into by or on behalf of Clients are actioned in a timely manner appropriately authorised and handled by persons with an appropriate level of knowledge, experience and status;
 - 3.1.3. ensure that all reasonable steps are taken to ensure that it obtains sufficient information about the Client in order to exercise a relevant discretion or other power in a proper manner and that such discretion or power is only exercised for a proper purpose;
 - 3.1.4. inform the Client in writing of the agreed terms between the TCSP and the Client, including the instructions received and the capacity and scope of discretion, if any, within which the TCSP will act for the Client; and
 - 3.1.5. establish and maintain policies, procedures and controls to monitor and ensure it always has the requisite capacity and resources to provide the services agreed with its Clients.

4. Advertising and Communication:

- 4.1. The Regulator should require that a TCSP adopts advertising and communication practices that:
 - 4.1.1. do not violate local and international laws;
 - 4.1.2. do not violate standards of prudence and fairness;
 - 4.1.3. are clear and ethical;
 - 4.1.4. do not contain any element that is in breach of laws or promotes the breach of other legislation; and
 - 4.1.5. as far as possible, do not place the jurisdiction at risk of being brought into disrepute.

	<p>5. Terms of Business:</p> <p>5.1. The Regulator should require a TCSP to enter into written terms of business with Clients for whom the TCSP has agreed to act. The terms should provide:</p> <p>5.1.1. a description of the services to be provided;</p> <p>5.1.2. the fees to be charged and the basis of the calculation of those fees;</p> <p>5.1.3. any exit fee and the basis upon which it is calculated;</p> <p>5.1.4. the means by which complaints about the TCSP’s services can be made; and</p> <p>5.1.5. the Regulator should require that a TCSP’s written terms of business provide that termination of a relationship be on reasonable notice, unless a good reason can be given.</p>
	<p>6. Complaints Handling:</p> <p>6.1. The Regulator should require that a TCSP:</p> <p>6.1.1. has an effective documented complaints handling mechanism which is fair and timely;</p> <p>6.1.2. provides advice to Clients about the TCSP’s complaints handling mechanism; and</p> <p>6.1.3. maintains a log of all complaints and their current status.</p>

(d) Purpose of Proposed Measure and Consistency with the Authority’s Functions

11. The revision of the SOG is necessary to align with GIFCS Recommendations by introducing rules in order to create enforceability. The proposed RSOG creates market conduct Rules by basing majority of the content on the existing SOG, Authority issued Regulatory Measures and GIFCS-Standards. These rules will be directly connected to the obligations established in legislation and therefore directly tied to enforcement powers available to the Authority.

12. Section 6(1)(b) of the MAA provides that the principal regulatory functions of the Authority are to:
 - “(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 monitor compliance with the anti-money laundering regulations; and*
 - (iii) *to perform any other regulatory or supervisory duties that may be imposed on the Authority by any other law;”*

13. The MAA in section 6(3) prescribes that the Authority shall, in performing its regulatory functions and its cooperative functions, *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;*
 - (c) *recognise the international character of financial services and markets and the necessity of maintaining the competitive position of the Islands, from the point of view of 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..”

14. Furthermore, Section 18 of both the Banks and Trust and Companies Act (“the BTCA”) and the Companies Management Act (“the CMA”) 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 the interest of creditors (in the case of corporate service providers under the CMA) and the interest of depositors or the beneficiaries of any trust, or other creditors (in the case of banks and trust companies under the BTCA). Section 12 of the CMA offers protection by requiring licensees to segregate every managed company's funds and other property from their own funds and property. - *“A licensee shall segregate the funds and other property of every managed company from the licensee’s own funds and property...”*

(e) Jurisdictional Comparison

15. The Authority conducted a jurisdictional comparison with other GIFCS member jurisdictions which sought to highlight, among other things, whether the measures issued contained the elements of market conduct as promoted in GIFCS Standards; the type of measure issued; and whether the issued measure is enforceable. The results of this comparative review are summarised in **Table 2** below.

Table 2: Summary of Jurisdictional Comparison

Jurisdiction	Cayman Islands	Bahamas	Bermuda	British Virgin Islands	Guernsey	Jersey	Ireland
GIFCS Member	Yes	Yes	Yes	Yes	Yes	Yes	No
Type of Document	Existing SOG-Market Conduct for TCSPs	Financial and Corporate Providers Act, 2020	Codes of Practice (December 2019) ²	Regulatory Code ³	The Fiduciary Rules and Guidance, 2020 ⁴	Code of Practice For Trust Company Business ⁵	Investments Firm Regulations 2023 ⁶
Enforceable?	-	✓	✓	✓	Rules : ✓ Guidance: -	✓	✓
Market Conduct Measure(s)	✓	-	✓	-	✓	✓	-
Integrity	✓	✓	✓	✓	✓	✓	✓
Conflicts of Interest	✓	✓	✓	✓	✓	✓	-
Relationship with clients	✓	✓	✓	✓	✓	✓	✓
Client Money & Assets	✓	-	✓	✓	✓	✓	✓
Advertising and Marketing	✓	-	✓	-	✓	✓	-

² BMA - Code of Practice December 2019

³ British Virgin Islands Regulatory Code

⁴ Guernsey Financial Services Commission-Fiduciary Rules and Guidance 2020

⁵ Jersey Financial Services Commission-Code of practice for TCSPs 2008

⁶ Central Bank of Ireland (Supervision & Enforcement Act) 2013

Terms of Business	✓	-	✓	-	✓	✓	✓
Complaints handling	✓	-	✓	✓	✓	✓	-

16. The jurisdictional comparison presented in Table 2 above highlighted that all measures issued across the select jurisdictions were binding and included the elements of market conduct necessary for the effective supervision of TCSPs as outlined within the GIFCS Standards. Therefore, in developing the proposed RSOG, it was prudent to consider the approach in the selected jurisdictions, combined with the GIFCS Standards and other relevant principles, guidance and recommendations.

(f) Cost and Benefit Analysis

17. **Table 3** below shows the relevant costs and benefits associated with the issuance of the proposed measure.

Table 3: Costs and Benefits of issuing the RSOG on Market Conduct for TCSPs and Company Managers

	Costs	Benefits
CIMA	<ol style="list-style-type: none"> The Authority will incur the usual administrative costs associated with publishing the revised measure and amending internal supervisory manuals. Costs associated with allocating necessary resources for conducting private sector consultation, reviewing feedback and monitoring compliance with the enhanced Measure. Offsite and onsite procedures may have to be refined to be aligned with identifying and taking action in response to breaches of rules. <p>These costs are not deemed to be overly burdensome and represent usual costs of the Authority carrying out its mandate.</p>	<p>The Authority stands to benefit from :</p> <ol style="list-style-type: none"> improved compliance by supervised entities with the measure, given the role enforceable rules play in dissuading non-compliance. The amendments to the existing measure will provide clarity and certainty on the obligations of TCSPs regarding market conduct. The proposed RSOG will provide the enforcement framework for the supervision of TCSPs as promulgated by the GIFCS Standards. Strengthened regulatory/supervisory framework for the TCSP sector to support CIMA’s mandate.
Cayman Islands	<ol style="list-style-type: none"> 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 	<p>The jurisdiction stands to benefit from the following:</p> <ol style="list-style-type: none"> enhanced jurisdictional profile as an international financial centre as it aims for improved compliance with international guidance from GIFCS

	Costs	Benefits
	<p>expectations regarding market conduct are already set out in the existing guidance.</p>	<p>relating to best practices on market conduct.</p> <ol style="list-style-type: none"> 2. safeguard the jurisdiction's reputation by minimising risks associated with weak market conduct regulations for TCSPs. Such risks include conduct risk, conflict of interest, and unlawful access to client's details. 3. The market conduct rules in the proposed RSOG, such as those relating to terms of business and complaints handling procedures, aim to support TSCP clients in making more informed financial decisions and effective avenues for redress in their business with TCSPs. <p>The jurisdiction can expect 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).</p>
TCSPs	<ol style="list-style-type: none"> 1. Regulated persons may incur compliance costs relating to implementing proposed rules, including the operation of client accounts and handling of client's assets and money. However, most requirements in the proposed RSOG are currently set out in the SOG-market conduct for TCSPs and/or in the RSOG on Internal Controls for regulated entities, albeit in less detail. It is, therefore, unlikely that the proposed amendments would add any material costs. 	<ol style="list-style-type: none"> 1. TCSPs will benefit from greater clarity and lessened ambiguity surrounding their obligations related to market conduct. 2. Increases certainty relating to on-site inspections and CIMA's expectations. 3. The rules will support mitigating the risk of regulatory breaches from unscrupulous business practices, leaving a TCSP open to fines, other penalties, and reputational damage. 4. TCSPs will benefit from the positive spill-overs associated with increased client confidence emanating from their funds being well-protected and safe. This will result in positive knock-on effects on profitability, customer growth and overall TCSP performance.
Summary	<p>Consequent to the above, it is determined that the benefits outweigh the costs associated with the issuance of the Rule and Statement of Guidance -Market Conduct for TCSPs and Company Managers and, therefore, should be pursued by the Authority.</p>	

(g) Consultation Feedback and Comments

18. 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 making a decision, which will be at its sole discretion.

19. 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.
20. 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 ⁷	<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><u>Suggested wording:</u> <i>Hard-to-Value Securities means an asset or liability for which <u>there is no Market Price which is required to be measured at fair value pursuant to 5.2</u></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.

21. 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.

(h) Notice of Representations

22. The Authority seeks consultation through written comments and representations from the private sector associations concerning the proposed *Rule and Statement of Guidance - Market Conduct for Trust and Corporate Services Providers and Company Managers*.
23. The Authority must receive representations by 1700hrs on **Wednesday January 3, 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.

⁷ This example is not reflective of the content of the proposed measure.

24. Comments and representations must be addressed to⁸:

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 [IfeRomeoBernard@cima.ky] and [MartinKaranja@cima.ky]

25. 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.

⁸ 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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