

# Cayman Islands Monetary Authority

## SUMMARY OF PRIVATE SECTOR CONSULTATION AND FEEDBACK STATEMENT



### STATEMENT OF GUIDANCE: MARKET CONDUCT FOR TRUST AND CORPORATE SERVICES PROVIDERS (TCSPs)

Section of proposed Measures	Industry Comment	Authority's response	Consequent amendments to the draft Requirements
<b>General question</b>	How will this be measured and enforced? Will there be any interaction with the Fines Regime if measures aren't met?	<p>The Administrative Fines framework is not currently in effect in relation to the regulatory laws and therefore cannot be applied at this time. Questions relating to the Administrative Fines regime will be responded to within the scope of that framework.</p> <p>This SoG will be considered when assessing licensees in the same way as all of the Authority's currently issued SoGs.</p>	No amendment.
<b>General comment</b>	There was no reference to accompanying Rule as some of the measures proposed appear to be prescriptive and read like Rules (e.g. Market Conduct 6.8, 8.3, 8.4, 10.1, 11.1, 11.7 & 14.1)	The issuance of a Rule is not always required or desirable for every SoG issued. In this instance, some elements of market conduct are not tangible and would present a challenge to observe, assess and measure for the purpose of a legally binding instrument as in the case of a Rule.	No amendment.

		<p>Once the SoG has been given time to allow for the Authority to assess its impact and effectiveness, the Authority can revisit the need for a binding instrument for those more tangible elements in the SoG, if necessary.</p> <p>The language used in points 6.8, 8.3, 8.4, 10.1, 11.1, 11.7, 14.1 and throughout the SoG, is consistent with guidance (e.g. "should" instead of "must").</p>	
<b>1.1</b>	<p><b>Suggested revision:</b></p> <p><del>"...is intended to</del> provides market conduct guidance to Trust and Corporate Services Providers <b>relating to market conduct.</b>"</p>	The Authority has no objection to the suggested revision.	Amended as per the suggested revision.
<b>1.3</b>	<p><b>Suggested revision:</b></p> <p><del>"...help ensure the fair treatment of Clients and the</del> general protection of Clients..."</p>	The Authority has no objection to the suggested revision.	Amended as per the suggested revision.
<b>2.2</b>	<p>The footnote (1) under paragraph 2.2 is technically limited to the "Statement of Guidance: Professional Indemnity Insurance for...Directors" and therefore references "professional directors licesned under the Directors Registration and Licensing Law 2014". However, this may unnecessarily confuse industry as the scope of the MC SOG is limited to licensees under the BTCL and CML. We would suggest the footnote be removed, if not required.</p>	Agreed.	Footnote deleted.
<b>3.1</b>	<p><b>Revise footnote on exclusions as follows:</b></p> <p>"Excluded: Private Trust Companies <b>and Nominee Trust Companies</b></p>	The Authority is of the view that while Nominee Trusts are tied to their parent companies and may be captured under their umbrella	No amendment.

	<p><b>(both being registered but not licensed entities)."</b></p>	<p>generally in terms of policies and procedures, these entities should still ensure appropriate conduct and consumer protection in respect of services they provide as they have a duty to conduct their business in a way that is not detrimental to customers."</p> <p>Where Nominee Trust Companies are not client facing, the SoG would understandably not be applicable.</p>	
<p><b>4.1(a)</b></p>	<p><b>Revise definition of "Client" as follows:</b></p> <p>In the case of a Trust, <b>Nominee Trust</b> or Restricted Trust Licensee, "Client" <b>may also, or instead,</b> refer to a person who has received or might reasonably be expected to receive the benefit of services relating to trust business, <b>or <del>the</del> a person who the Licensee treats as its client from a client relationship perspective."</b></p> <p><b>Comments provided:</b></p> <p>With respect to trust licensees, the person who is considered to be the licensee's "Client" can vary significantly depending on the circumstances. The definition of "Client" should be sufficiently broad to encompass all such scenarios.</p> <p>Some scenarios include:</p> <ol style="list-style-type: none"> <li>1. Settlor of trust was the Client and entered into a services and fees agreement with the trustee at the time of formation of the trust.</li> </ol>	<p>The Authority has considered industry's comments as well as the alternative definitions put forward and has agreed to revise the definition as noted in the comment box directly below.</p>	<p>Revised as noted directly below.</p>

Settlor is now deceased and the trust continues for the benefit of the beneficiaries (who may be minors and/or unborn children, or may be unaware as to the existence of the trust until they reach a certain age). The trustee charges fees based on the last agreed fees or on its published terms/rates and the fees are paid out of the trust assets (which is typically the case) in accordance with the terms of the trust deed.

**2.** The licensee is trustee of a STAR trust established by way of a declaration of trust (so the trust has no settlor) for purposes only (so the trust has no beneficiaries). From a client relationship perspective, the trustee might, for example, treat the enforcer as its client – however, the enforcer is not receiving a benefit of the trust so would not fit within the proposed definition of "Client". The trustee is simply treating the enforcer as its Client for the purposes of the client relationship.

**3.** The definition should contemplate that Clients may be corporates as well as individuals. In a commercial trust context Clients are typically corporate clients.

This has important implications to Section 11 below (Terms of Business), as there may be (probably limited) cases where there is no

	<p>written agreement between the trust licensee and the Client. The settlor or contributor of assets to the trust may be deceased and the Clients may, for example, be the beneficiaries. The trustee would not likely have a written agreement with all of the beneficiaries (who, as noted above, will often be minors/unborn children, or may not agree to sign any document that purports to make them a Client for onshore tax or other reasons); rather, the trust deed and general trust law will govern the obligations of the trustee to the beneficiaries and the trustee's authority to be remunerated for its services.</p>		
<b>4.1(a)</b>	<p><b>Revise definition of "Client" as follows:</b></p> <p><b>"In the case of a Trust or Restricted Trust Licensee, "Client" also refers to a beneficiary of any trust administered by a Trust or Restricted Trust Licensee."</b></p>	<p>The Authority has no objection to the suggested revision.</p>	<p>Largely amended as per suggested revisions to instead read:</p> <p>In the case of a Trust, <del>or</del> Restricted Trust <b>or Nominee Trust</b> Licensee, "Client" <b>may</b> also refer to a <del>person who has received or might reasonably be expected to receive the benefit of services relating to trust business</del> beneficiary of any trust administered by a Trust, Restricted Trust or Nominee Trust Licensee."</p>
<b>4.1(b)</b>	<p><b>Suggested revision:</b></p> <p>"...or on behalf of, a <b>Client person</b> about..."</p>	<p>The Authority is of the view that there are occasions where a licensee may receive a complaint from someone who does not fit the SoG's definition of Client (e.g. a former client).</p>	<p>No amendment.</p>
<b>5.1</b>	<p><b>Suggested revision:</b></p>	<p>The Authority has no objection</p>	<p>Amended as per the suggested revision.</p>

	<p>"Licensees should at all times conduct their business with integrity, <del>and act honestly</del> and <del>in a straightforward manner towards</del> communicate with their Clients in a clear and precise manner."</p>	the suggested revision.	
5.2	<p><b>Suggested revision:</b></p> <p>A Licensee's relationship with its Clients should be one of trust and utmost good faith and any advice provided, whether solicited or unsolicited, should, <b>subject to paragraph 6.6 below</b>, be done objectively, <del>and</del> independently <del>in the best</del> and with due regard to the interests of its Clients."</p>	The Authority is of the view that there are other sections within the SoG other than just 6.6 that need to be considered relating to a Licensee's relationship with its Clients (including the provision of advice) therefore the current wording is deemed appropriate.	No amendment (see revisions to 5.2 below instead).
5.2	<p><b>Suggested revision:</b></p> <p>A Licensee's relationship with its Clients should be one of <b>trust fidelity</b> and utmost good faith, <b>acting in the best interests of its Clients, in accordance with the terms of the documentation governing their relationship</b> and any advice provided, whether solicited or unsolicited, should be done objectively, <del>and</del> independently <del>in the best</del> and with due regard to the interests of its Clients."</p>	Suggested revision considered and some changes made.	<p>Largely amended as per the suggested revisions to instead read:</p> <p>A Licensee's relationship with its Clients should be one of trust and utmost good faith, <b>acting in the best interests of its Clients, in accordance with the terms of the documentation governing their relationship.</b> <del>—and</del> Any advice provided <b>to its Clients</b>, whether solicited or unsolicited, should be <b>provided</b>, objectively and independently, in their best interests <del>of its Clients."</del></p>
5.3	<p><b>Suggested revision:</b></p> <p>"Licensees <del>should avoid</del> <b>must refrain from</b> unethical business practices and <del>should</del> <b>shall</b> not circumvent or contract out of the requirements contained within this Guidance. <b>Subject to paragraph</b></p>	The language offered is not appropriate for the purpose of Guidance issued by the Authority (e.g. the words "must" and "shall" are more consistent with a binding instrument).	No amendment (see revisions to 5.3 below instead).

	<p><b>6.6 below,] Licensees should not conduct their affairs to the detriment of their Clients."</b></p>		
5.3	<p><b>Suggested revision:</b></p> <p>"Licensees should avoid unethical business practices and should not circumvent or contract out of the requirements contained within this Guidance. <del>Licensees should not conduct their affairs to the detriment of their Clients."</del></p> <p><b>Comments provided:</b></p> <p>In the case of a trust licensee, as trustee the licensee has a fiduciary obligation to act in the best interests of the beneficiaries, who in some circumstances will not be the Client.</p>	<p>The Authority has no objection the suggested revision.</p> <p>The revised Client definition should take care of the concerns noted with respect to beneficiaries.</p>	Amended as per the suggested revision.
5.3	<p><b>Comments provided:</b></p> <p>This seems hard to measure and subjective unless 'unethical business practices' is given some sort of definition.</p>	<p>The Authority does not deem it necessary to define 'unethical business practices' at this time. There are current measures in place that refer to similar terms "ethics", "ethical" etc. without any definition having been provided. The Authority has not been made aware of any challenges posed to licensees' understanding of what is ethical/unethical.</p> <p>Once the guidance has been given time to allow the Authority to assess its impact and effectiveness, the Authority can revisit the need for such a definition. Also, to offer a definition may create more of a 'check-box' and narrow sort of approach to licensees' business</p>	No amendment.

		practices.	
<b>5.4</b>	<b>Suggested revision:</b> “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 <b>is</b> authorised by the person(s) to whom the duty of confidentiality is owed.”	The Authority has agreed to revise.	Amended to instead read:  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 <b>they are</b> authorised by the person(s) to whom the duty of confidentiality is owed.
<b>5.4</b>	How do the provisions contained in this section interact with those of the Sensitive Information (disclosure) Law?	SoGs are not equivalent to law and are not binding instruments, therefore cannot supersede any law that licensees must comply with.  As noted within this point, any disclosure is only as required or permitted by an applicable law, therefore the SoG does not contradict the Confidential Information (Disclosure) Law or the Data Protection Law (when it commences). To be clear, where a law requires disclosure or data protection a licensee must comply.	No amendment.
<b>6.1</b>	<b>New 6.1 added:</b> “A Licensee should always treat its Client fairly.”	This point is captured in 6.1 (6.2 with the addition of industry’s comment) of the SoG however the Authority has no objection to including it for added emphasis.	Added to SoG.
<b>6.3</b>	<b>Suggested revision:</b> “A Licensee should act with due skill, care and diligence <b>in the conduct of its business and</b> to fulfil the responsibilities it has undertaken.”	The Authority has no objection to the suggested revisions.	Amended as per the suggested revisions.
<b>6.4</b>	<b>Suggested revision:</b> “A Licensee should ensure that	The qualification offered by the “... business it provides to its clients” automatically makes it relevant to	No amendment.



	adequate procedures are implemented to ensure that detailed robust reviews are conducted at appropriate intervals in respect of the <b>market conduct of the</b> trust business or company management business that it provides to its Clients."	market conduct.	
<b>6.6</b>	<b>Suggested revision:</b> "Trust, Restricted Trust and Nominee Trust Licensees should treat the interests of beneficiaries <b>and/or purposes (as applicable)</b> as paramount and should act impartially between beneficiaries subject to the terms of the trust and to their legal obligations to other persons or bodies."	The Authority has no objection the suggested revision.	Amended as per the suggested revision and to further clarify as follows:  "Trust, Restricted Trust and Nominee Trust Licensees should treat the interests of beneficiaries <b>and/or purposes (as applicable)</b> as paramount and should act impartially between beneficiaries subject to the terms of the trust and to their legal obligations <del>to other persons or bodies.</del> "
<b>6.7</b>	<b>Suggested revision:</b> "Licensees should ensure that, where appropriate, <del>there is</del> <b>they have</b> 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."	The Authority has no objection to the suggested revision.	Amended as per the suggested revision.
<b>6.8</b>	<b>Suggested revision:</b> "Decisions taken or transactions entered into by or on behalf of Clients, <b>or in respect of Client structures, should be, within the scope of authority of the Licensee,</b> <del>be</del> documented and actioned by Licensees in a timely manner, and should be properly	The Authority has no objection the suggested revision.	Amended as per the suggested revision.

	authorised and handled by persons with an appropriate level of knowledge, experience and status.”		
<b>6.9</b>	<p><b>Suggested revision:</b></p> <p>“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 <del>it the Licensee</del> to fulfil its responsibilities to the <del>Client them</del>.”</p>	The Authority has no objection to the suggested revisions.	Amended as per the suggested revisions.
<b>6.10</b>	<p><b>Suggested revision:</b></p> <p>“A Licensee should transact its business (including the establishing, transfer or closing of business relationships with its Clients) in an expeditious manner, <del>where</del> <b>appropriate</b>.”</p>	The Authority has no objection to the suggested revision.	Amended as per the suggested revision.
<b>7.1</b>	<p><b>Suggested revision:</b></p> <p>“A Licensee should take reasonable steps to give a Client it advises, <del>in a comprehensible and timely way</del>, any information in a clear, precise and timely manner needed to enable <del>him the Client</del> to make a balanced and informed decision.”</p> <p><b>Comments provided:</b></p> <p>Trustees do not advise. The last sentence of this paragraph is already part of a trustee’s core duties. <b>This also applies to 7.2.</b></p>	<p>The Authority has no objection to the suggested revision.</p> <p>The Authority understands that Trustees do not advise, however the Authority is of the view that 7.1 goes beyond just those Clients that a Licensee advises and extends to Clients generally in terms of a Licensee’s fulfilment of its responsibilities to Clients.</p>	<p>Largely amended as per the suggested revisions to read as follows:</p> <p>“A Licensee should take reasonable steps to give a Client <del>it advises</del>, <del>in a</del> comprehensible and timely <del>way, any</del> information <del>in a clear, precise and timely manner</del> needed to enable <del>him the Client</del> to make a balanced and informed decision.”</p>
<b>7.2</b>	<p><b>Comments provided:</b></p> <p>Trustees do not advise. The last sentence of this paragraph is already part of a trustee’s core duties. <b>This also applies to 7.2.</b></p>	The Authority understands that Trustees do not advise however the Authority is of the view that 7.2 goes beyond just those Clients that a Licensee advises and extends to Clients generally in terms of a Licensee’s fulfilment of	No amendment.

		its responsibilities to Clients.	
<b>7.3</b>	<p><b>Suggested revision:</b></p> <p>“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 <del>a</del> <b>proper an informed</b> 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.”</p>	The Authority has no objection to the suggested revision.	Amended as per the suggested revision.
<b>8.1(a)&amp;(b)</b>	<p><b>Suggested revision:</b></p> <p>“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:</p> <p>a) the requirement to hold Client monies in clearly <b>segregated separate</b> and distinct accounts from other Client’s accounts and any accounts of the Licensees’ <b>own</b> monies;</p> <p>b) <del>the</del> appropriate <b>written</b> disclosure to Clients of the terms upon which Client money is held;...”</p> <p><b>Comments provided:</b></p> <p>8.1(b) does not apply to Trustees.</p>	<p>The Authority has no objection to the suggested revisions.</p> <p>The Authority is of the view that these sections are also applicable to Trustees.</p>	Amended as per the suggested revisions.
<b>8.1(d)</b>	<p><b>Comments provided:</b></p> <p>Is 8.1(d) referring to distributions to beneficiaries?</p>	8.1(d) includes distributions to beneficiaries.	No amendment.
<b>8.1(d)</b>	In relation to paragraph 8 on Client	The Authority has no objection to	Amended as per the suggested

	<p>Money, we would recommend qualifications or revisions be included for paragraph 8.1 (d) as follows:</p> <p>(d) requirements for appropriate authorisation and signing powers, at a minimum, dual signatures in the event of Client money payouts, <b>subject to Client agreed terms and conditions</b>;</p> <p><b>Comments provided:</b> As "Client money payouts" is not otherwise defined or qualified, it may include simple nominal payments; e.g. weekly service fees, filing fees or bank fees. Clients usually agree (under the service terms and conditions) to allow such payments to be made without necessarily requiring dual authorisation.</p>	<p>the suggested revisions.</p>	<p>revisions.</p>
<p><b>8.1(e)</b></p>	<p>In relation to paragraph 8 on Client Money, we would recommend qualifications or revisions be included for paragraph 8.1 (e) as follows:</p> <p>(e) prevent the <del>inappropriate</del> use of Client monies for the settlement of the Licensees' fees and disbursements, <b>subject to Client agreed terms and conditions</b>, and protect the Clients' assets from theft, fraud and other forms of misappropriation <b>or inappropriate use</b>.</p> <p><b>Comments provided:</b> Use of Client monies to settle fees</p>	<p>The Authority has no objection to the suggested revisions.</p>	<p>Amended as per the suggested revisions.</p>

	and disbursements (whether of the Corporate Service Provider or other service agent) is not always “inappropriate” and is often agreed by the Client in order to facilitate ongoing services (and good standing) or to minimise unnecessary correspondence. Again, this arrangement would ordinarily be clearly set out in service Client terms and conditions.		
<b>8.2</b>	<p>“Client money includes money that Licensees hold or receive on behalf of a Client or owe to a Client.”</p> <p><b>Comments provided:</b> This appears to be relevant to banking business but not trust / corporate services businesses, such as Licensees would not be holding client monies. If this section is to be retained it should be revised to refer to assets held in trusts or by companies which are serviced by the Licensee.</p>	<p>Section 12 of the Companies Management Law (“CML”) requires that licensees segregate the funds and other property of every managed company from their own funds and property.</p> <p>The language used in the SoG is deemed to be sufficiently flexible to capture assets held in trusts or by companies which are serviced by the Licensee.</p>	No amendment, however this point was moved to the definitions section of the SoG.
<b>8.3 (b) (now 8.2(b))</b>	<p><b>Suggested revision:</b> “Where a Licensee is responsible for administering or holding Client assets, the Licensee should develop appropriate documented policies and clear procedures that ensure:</p> <p>b) <del>the there is a segregation of those</del> assets are segregated from those of the Licensee; and...”</p>	The Authority has no objection to the suggested revisions.	<p>Largely amended as per the suggested revisions to instead read:</p> <p><del>the there is a segregation of those</del> Client’s assets are segregated from those of the Licensee;</p>
<b>8.4</b>	<p><b>Suggested revision:</b> “A Licensee should have documented systems, controls and procedures governing sole, dual or multiple</p>	The Authority has no objection to the suggested revisions.	Amended as per the suggested revisions.

	authorisations for handling its <b>business Client</b> assets.”		
<b>8.5</b>	<p><b>Suggested revision:</b></p> <p>“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 <b>the beneficiaries and/or purposes (as applicable)</b> and in accordance with the trust deed and applicable laws.”</p>	The Authority has no objection to the suggested revisions.	Amended as per the suggested revisions.
<b>10</b>	This is strictly not relevant. Trustees should already have in place terms which govern conflicts.	The Authority understands that this section may not always be applicable in the case of Trustees; however it is of the view that no additional expectation or duties are imposed as a result of being in compliance with the guidance set out therein.	No amendment.
<b>10.1</b>	<p><b>Suggested revision:</b></p> <p>“A Licensee should ensure that it has appropriate policies and well documented procedures to minimise <b>and manage</b> conflicts of interest and ensure <b>the</b> fair treatment of Clients.”</p>	The Authority has no objection to the suggested revisions.	Amended as per the suggested revisions.
<b>10.3</b>	<p><b>Suggested revision:</b></p> <p>“Where the interests of a Licensee conflicts with the interests of a Client, it should decline to act or, <b>where possible in compliance with applicable fiduciary duties</b>, 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.”</p>	The Authority has no objection to the suggested revisions.	Amended as per the suggested revisions.

<b>10.4</b>	<p><b>Suggested revision:</b></p> <p>"A Licensee should not unfairly place its interests above those of its Clients. <del>and, w</del>Where a properly informed Client would reasonably expect <del>that</del> the Licensee <del>would</del> to place <del>his the</del> Client's interests above its own, the Licensee should <del>live up to meet</del> that expectation."</p>	<p>The Authority has no objection to the suggested revisions.</p>	<p>Amended as per the suggested revisions</p> <p>A Licensee should not unfairly place its interests above those of its Clients. <del>and, w</del>Where a properly informed Client would reasonably expect <b>that</b> the Licensee <b>would</b> to place <b>his the</b> Client's interests above its own, the Licensee should <b>live up to meet</b> that expectation."</p>
<b>11</b>	<p>The Statement refers to written terms and conditions being entered into with a Client. This needs to be clarified to determine whom the Authority considers a Client for trust matters.</p>	<p>The definition of Client was revised.</p>	<p>No amendment.</p>
<b>11.1</b>	<p>CIMA is being asked to consider the industry's comments noted above in 4.1(a) and to consider if 11.1 can be softened to include "<b>to the extent practicable</b>"?</p>	<p>The Authority is of the view that where a Licensee has taken on a Client, it should have a written agreement in place that governs how it will fulfil its obligations to the Client.</p>	<p>No amendment.</p>
<b>11.1</b>	<p><b>Comments provided:</b></p> <p>Not relevant for Trustees.</p> <p>Some beneficiaries may not be entitled to know that they are beneficiaries for very good reasons.</p>		
<b>11.2</b>	<p><b>Comments provided:</b></p> <p>Not relevant for Trustees.</p> <p>Some beneficiaries may not be entitled to know that they are beneficiaries for very good reasons.</p>	<p>The Authority is of the view that this section is also applicable to Trustees.</p> <p>The section is not suggesting that written agreements be in place with unknown beneficiaries, rather it is for written agreements to be</p>	<p>No amendment.</p>

		entered into with the party(ies) that a Licensee has agreed to provide a service or services.	
<b>11.2</b>	<p><b>Suggested revision***:</b></p> <p>A Licensee should ensure that at all times mutually agreed [written] terms <del>are aptly confirmed in writing with the Client including</del> <b>include</b> the instructions received, <b>the authority granted</b>, and the capacity and scope of discretion, if any, within which the Licensee will act for its Client, are agreed with the Client.</p> <p><b>Comments provided:</b></p> <p>See earlier comments relating to trust scenarios where written terms might not be possible (comments noted in 4.1(a) above).</p> <p><i>***This point was revised as per the suggested changes above and moved below 11.1 (was 11.3) in the SoG.</i></p>	The Authority has no objection to the some of the suggested revisions.	<p>Somewhat amended as per the suggested revisions.</p> <p>A Licensee should ensure that at all times mutually agreed terms are aptly confirmed in writing with the Client including the instructions received, <b>the authority granted</b>, and the capacity and scope of discretion, if any, within which the Licensee will act for its Client, <del>are agreed with the Client.</del></p>
<b>11.2</b>	<p>In relation to paragraph 11.2, on the Terms of Business;</p> <p>"...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 ensure the Client made an informed decision before committing to the negotiated terms of business."</p> <p>We were interested to know what the industry or CIMA might perceive as the "main risks" in relation to</p>	Licensees should make every effort to protect clients and ensure that clients are aware of and understand the service(s) being provided. Understandably, Licensees should know their business well enough to be able to determine what the main risks to their specific Clients are, if any, based on the particular service(s) being provided, and clearly communicate such risks so that even the least trust and company management savvy Client can understand.	No further amendments.



	<p>establishing trusts and companies (if any), or if this criteria would be satisfied simply by the client reading and agreeing to the terms and conditions. If not, is it anticipated that some form of additional document be provided to the client which summarises the terms and conditions in advance of their execution. If so, we would view this as an unnecessary and inefficient step in the client acceptance process.</p> <p>The provision of trust and company management services is not the same as providing a product or service to the retail market (e.g. carrying out a securities trade for a retail client). Trust and company management clients invariably have a clear understanding of the nature and purpose of the vehicle that they wish to establish. This is ordinarily set out clearly in the trust and company establishment documents and the client (or their agent) will invariably have the opportunity review those prior to committing to establish the vehicle.</p>	<p>If the agreed terms and conditions appropriately communicate the possible main risks attached to the business arrangement, the Authority sees no need for additional documents.</p> <p>The Authority's concern is that the Clients are fully aware of the main risks and that it is not simply a 'fine print' approach to the communication of terms, conditions and major risks that could be to the detriment of a Client. Clients must be able to make an informed decision.</p> <p>While most Clients may understand the nature and purpose of the vehicle they wish to establish, there will always be those who may not have the knowledge and true understanding of these vehicles particularly those that may not be as highly educated/qualified or experienced in such matters.</p>	
<p><b>11.3</b></p>	<p><b>Suggested revision:</b></p> <p>"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 <del>ensure</del> <b>enable</b> the Client <del>made to make</del> an informed decision before committing to the negotiated terms of business."</p> <p><b>Comments provided re 11.3 and</b></p>	<p>The Authority has no objection to the suggested revisions.</p> <p>The Authority is of the view that every Client arrangement should have written terms of engagement.</p>	<p>Amended as per the suggested revisions.</p>

	<p><b>11.4:</b>  Because of the volume of clients corporate service providers have, it is not practically possible to have each of them acknowledge acceptance of the Terms of Engagement ("<b>ToE</b>") in writing. The ToE are provided to clients and made available on the Law firm's website, ensuring they are aware of the contractual terms governing the relationship. It is also made clear in the ToE that continuing instruction will be taken as acceptance of the ToE. A large number of the corporate services providers on the Island operate in a similar way.</p>		
<p><b>11.3</b></p>	<p><b>Suggested revision:</b>  A Licensee should ensure that at all times mutually agreed terms are aptly confirmed in writing with the Client including the instructions received and the capacity and scope of discretion, if any, within which the Licensee will act for its Client.</p> <p><b>Comments provided:</b>  The current wording implies that a licensee will not be able to amend the terms and conditions unilaterally. Historically, this has been a matter of the law of contract and acceptable to Clients if agreed in the original terms and conditions. Ordinarily, where amending terms, licensees will notify the client of the change and refer them to a website or document for latest version of terms, giving the client a period of time to revert to the</p>	<p>If the manner in which terms and conditions can be changed is agreed to in the original terms of engagement, the Authority does not see that the use of the term "mutually" prevents a unilateral amendment given that such an arrangement for amendments was mutually agreed to in the beginning.</p>	<p>No amendment.</p>

	licensee with any questions.		
<b>11.5 (b), (c),(e), (f)&amp; (g)</b>	<p><b>Suggested revisions:</b></p> <p>“The terms of business for a Licensee should, inter alia, include,:</p> <p><b>b) where standard fees are to be charged (as opposed to fees based on a special fee agreement with the Client)</b> the fees to be charged (including any exit fee), 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;</p> <p><b>c) confirmation of how and by whom requests for actions are to be given (if applicable to the Client and/or the structure);</b></p> <p><b>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; and</b></p> <p><b>f) a statement that the Licensee is licensed by the Authority.; and</b></p> <p><b>g) the Authority's contact details.”</b></p> <p><b>Comment provided re 11.5(c):</b> For trust relationships, the settlor/client is not typically in a position to request any action by the trustee so this may not be applicable in all cases.</p>	<p>The Authority is of the view that prior to a Licensee charging fees to a client, those fees should be agreed upon between the Licensees and the client prior to the establishment of the relationship.</p> <p>However, to further clarify, the Authority has revised the SoG by adding a new point within section 11.</p>	<p>Amended to include a new point within section 11 to read:</p> <p><b>Any special or non-standard fee arrangement must be established in writing.</b></p> <p><b>11.5(b):</b> Amended as follows:</p> <p><del>The any</del> fees to be charged <del>(including any exit fee)</del>, 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;</p> <p><b>11.5(c):</b> Amended as per some of the suggested revisions to instead read: confirmation of how and by whom requests for actions are to be given <b>(if as applicable to the Client and/or the structure);</b></p> <p><b>11.5(e):</b> amended as per the suggested revisions.</p> <p><b>11.5(f):</b> amended as per the suggested revisions.</p> <p><b>11.5(g):</b> amended as per the suggested revisions.</p>
<b>11.5(d)</b>	<b>Questions asked re 11.5(d):</b> If a Complaints Policy is available to	If the Complaints Policy is available to the Client and includes	No amendment.

	<p>clients, does it also need to be included in the Terms of Engagement?</p>	<p>the procedure for dealing with complaints, it is not necessary for the contract, agreement or other written form to actually include the Policy. However, it is recommended that the contract, agreement or other written form refers Clients to the Policy for guidance on the procedure to make a complaint and also includes details of where the Client can locate the Policy and procedure.</p>	
<p><b>11.6 (d) &amp; (f)</b></p>	<p><b>Suggested revision:</b></p> <p>"The agreed terms of business between a Licensee and its Client should also <b>(as appropriate to the structure)</b> ensure that the documentation:</p> <p><b>d)</b> be provided prior to the provision of any services in connection to the business of company management <b>or trust business</b>, except when it is impractical to do so, in which case the document shall be provided at the earliest available opportunity;</p> <p><b>f)</b> where the Licensee holds a Client's money, <b>and</b> sets out the terms on which that money is held; ..."</p> <p><b>Questions asked re 11.6:</b></p> <p>What is "the documentation" a reference to? Is it the Licensee's terms of business referred to in paragraph 11.5 above?</p>	<p><b>11.6(f):</b></p> <p>The intention here was to state that the Licensee should set out the terms on which money is held, if the Licensee in fact holds a Client's money. Revised to make this clear.</p> <p><b>Question re 11.6:</b></p> <p>The term "documentation" refers to the written terms of business as detailed in paragraph 11.5.</p>	<p>Amended introduction as per suggested revision, and to the following sub-sections:</p> <p><b>11.6(d):</b> as per suggested revision.</p> <p><b>11.6(f): <del>where the Licensee holds a Client's money,</del> sets out the terms on which that money is held; <del>sets out the terms on which that money is held</del> in cases where the licensee holds a Client's money;</b></p>

	<p><b>Comment provided re 11.6(e):</b> For example, (e) is not applicable to trust relationships.</p> <p><b>Comment provide re 11.6(f):</b> This appears to be relevant to banking business but not trust / corporate services businesses, such Licensees would not be holding client monies. If this section is to be retained it should be revised to refer to assets held in trusts or by companies which are serviced by the Licensee.</p>	<p><b>11(6)(e):</b> Noted. The addition of "as appropriate to the structure" should ensure that 11(6)(e) is applied where relevant.</p> <p><b>Comment re 11.6(f):</b> The language used is deemed sufficiently flexible.</p>	
<b>12.3</b>	<p><b>Suggested revision:</b> "Licensees should establish a suitable complaints record keeping system that includes the maintenance of a register to adequately document complaints noting such details as <b>the complaint, date of complaint,</b> agreed compensation, compromises, and status of the complaints."</p>	The Authority has no objection to the suggested revisions.	Amended as per the suggested revisions.
<b>13.2(c)</b>	<p><b>Suggested revision:</b> "A Licensee should ensure that its advertising and communication practices:  <b>c)</b> are clear, <b>not misleading</b> and ethical;..."</p>	The Authority has no objection to the suggested revisions.	Amended as per the suggested revisions.
<b>Section 14</b>	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	This section is not alluding to the Companies Management Licensee being responsible for the inaction/failure of a director but rather refers to its assessment of	

	<p>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?</p>	<p>directors as discussed in this section whether the directors are provided by the licensee itself or whether it arranges for persons to act as Directors. This section seeks to ensure that the Licensee has policies and procedures in place. If it has appropriate policies and procedures, then the Licensee will not be responsible. It is not a transfer of responsibility for wrongdoing.</p> <p>It is not deemed unreasonable if a Licensee is arranging for a person to act as a Director that the Licensee has some level of satisfaction that such a director is fit and proper and able to carry out his/her duties. Certainly, a Licensee should want to ensure that it makes such arrangements in the most prudent manner possible to ensure its Clients are properly served and protected as much as possible.</p>	
<p><b>14.1(a)(iii)(iv) &amp; (v)</b></p>	<p><b>Suggested revision:</b></p> <p>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:</p> <p><b>a)</b> where it acts or arranges for another to act, should:</p> <p><b>iii.</b> have appropriate policies and controls to properly assess and determine that those acting are <b>fit, proper,</b> suitable, competent,</p>	<p>The Authority has no objection to the suggested revisions.</p>	<p>Amended as per the suggested revisions.</p>

	<p>understand their duties and able to comply with the requirements of the relevant laws;</p> <p><b>iv.</b> 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-<del>company</del>; and</p> <p><b>v.</b> 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;</p>		
<b>15</b>	The transition period for implementation of policies should be extended to at least one year.	The Authority is of the view that the six month period offered is sufficient for Licensees to implement the SoG.	No amendment.
<b>15.1</b>	<p><b>Comment provided:</b></p> <p>Suggest reasonable time period for implementation, particularly if trust company terms and conditions and fee agreements with clients need to be amended to comply with this SOG.</p>	<p>The Authority does not see any reason why an applicant should not be required to apply the SoG immediately (upon its publication) given that the applicant would not yet be licensed.</p> <p>For existing Licensees a period of 6 months is provided and is deemed sufficient.</p>	No amendment.
<b>15.3</b>	<p><b>Suggested revision:</b></p> <p>Licensees that already have business conduct policies and procedures in place should assess them against this Guidance and <del>address</del>-<b>remedy</b> any deficiencies within six months of the issue of this Guidance.</p>	The Authority has no objection to the suggested revisions.	Amended as per the suggested revisions.