



# **Statement of Guidance**

## **Nature, Accessibility and Retention of Records**

**April 2023**



## **Statement of Guidance Nature, Accessibility and Retention of Records**

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

- 1.1. To ensure that persons and entities regulated or registered under the regulatory Acts (the "regulatory Acts") as defined in the Monetary Authority Act (as amended) ("MAA") ("Regulated Entities") maintain their records in a manner that promotes accessibility, retention and appropriate security.
- 1.2. The Cayman Islands Monetary Authority (the "Authority") recognises that the arrangements for record keeping will vary according to the manner in which the business of the regulated entity is structured, organised and managed; commensurate with the size, complexity, structure, nature of business and risk profile of its operations. The overriding principle, however, is that the records and systems must be adequate to satisfy the requirements of the Authority and relevant regulations and Acts. All regulatory Acts allow the Authority to access and inspect records maintained by regulated entities. The Anti-Money Laundering Regulations (as amended) also require the maintenance of certain records. It is expected that record keeping arrangements to comply with the Regulatory Acts may be additional to the record keeping arrangements required under other Acts and regulations.
- 1.3. This Guidance is not intended to be prescriptive or exhaustive; rather this Guidance sets out the Authority's minimum expectations of a regulated entity's record keeping arrangements.
- 1.4. Record keeping requirements apply to all regulated entities.

### **2. Statutory Authority**

- 2.1. Section 34 of the MAA provides that the Authority may issue rules, statements of principles or guidance:
  - (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 Statement of Guidance on Nature, Accessibility and Retention of Records. It should be read in conjunction with the regulatory instruments issued by the Authority from time to time, particularly the Statement of Guidance on Outsourcing, the Anti-Money Laundering Regulations (as



amended), and the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing.

### **3. Scope of Application**

- 3.1. This Statement of Guidance applies to all entities regulated by the Authority. For the purpose of this Guidance, a regulated entity is an entity that is regulated by the Authority in accordance with the regulatory Acts, as defined in the MAA.
- 3.2. References to any act or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced from time to time.
- 3.3. The Authority acknowledges that regulated entities that are part of a group may be subject to group-wide record keeping practices. However, the Authority considers it important for each entity in a group structure that is a separate legal entity to adopt record keeping practices that meet the objectives of this Statement of Guidance and that are appropriate for the particular operations of that legal entity. The regulated entity must assess whether this can be achieved by adopting the group-wide standard. Additionally, when records are kept by another member of the group, they must be accessible to the Authority.
- 3.4. This Guidance does not codify or amend any existing Act. Where the Guidance is incompatible with the existing Act, the Act takes precedence and prevails.
- 3.5. The Authority will consider the contents of this Guidance in its supervisory processes, including onsite inspection.

### **4. General**

- 4.1. A "record" has the same meaning as "document" as defined in the MAA and "electronic record" has the same meaning as defined in the Electronic Transactions Act (as amended). Original records include records originating electronically or electronic copies of paper-based records. All records must be legible and easily accessible.
- 4.2. Accessible records are records that can be provided by the regulated entity to the Authority within a reasonably short timeframe. The Authority expects that most records should be provided within 1-3 business days from the time they are requested by the Authority, or within the timeframe as determined from time to time by the Authority, whether stored within the Cayman Islands or in another jurisdiction.
- 4.3. A regulated entity should keep records of books of accounts and other financial affairs as well as other records. Some examples include:
  - a) Corporate accounting records;
  - b) Organizational records;
  - c) Employee and other administrative records;



- d) Risk management policies;
- e) Corporate records such as incorporation documents and shareholders and directors meeting minutes and board resolutions or their equivalents;
- f) Client records such as client communication and complaints records;
- g) Service provider records such as copies of contracts and agreements;
- h) Customer due diligence records;
- i) Annual returns due to the Authority; and
- j) Any other records as required by relevant regulatory or other Acts for the period specified by the regulatory or other Acts.

Record keeping should be sufficient to enable the Authority to monitor compliance with regulatory and anti-money laundering and countering terrorism financing obligations.

- 4.4. Regulated entities should ensure that their records, including accounting records, are maintained using an appropriate record management system and in a manner that allows the Authority to access records. Records may be kept in a form other than a paper-based document or copy of a document, as long as the integrity of the document remains intact.
- 4.5. A regulated entity should establish a records management system that addresses but is not limited to the categorization of records, records retention periods for various categories of records, and disposal of records. The records management system should comprise of a comprehensive record retention policy that is in line with regulatory Acts and other legal requirements in the Cayman Islands.
- 4.6. Records should be maintained so that they are up-to-date at all times as far as is reasonably practical. There should be no unjustifiably excessive delays to records maintenance.
- 4.7. A regulated entity may accept and rely on records supplied by a third party so long as those records are capable of being, and are, reconciled with records held by the regulated entity.
- 4.8. Where it is impractical for a regulated entity to maintain its own records and records are retained by a third party, the regulated entity maintains ultimate responsibility for record retention and ensuring records can be retrieved in a timely fashion. The regulated entity remains responsible for compliance with all applicable Acts, record-keeping requirements and for accessibility of records by the Authority.

## **5. Records Retention Timeframe**

- 5.1. Regulated entities should maintain records in their original format for a minimum period of five years after the transaction date or any other period as stipulated in any applicable regulatory or other Acts. Original format includes electronic copies of paper-based records as stipulated in section 4.1.



- 5.2. This statement is without prejudice to other legal obligations the regulated entity may have to keep records for certain periods of time, but does stipulate the minimum time period for which records must be kept. For example, where a fiduciary relationship has been formed with clients, it may be necessary to keep records for longer periods of time. In the case of trusts for example, the requirement to keep records may last for the lifetime of the trust and for further periods thereafter.

## **6. Elements of Records Management**

- 6.1. A regulated entity must maintain adequate procedures for the availability, maintenance, security, privacy and preservation of records, working papers and documents of title belonging to the regulated entity, clients or others so that they are reasonably safeguarded against loss, unauthorised access, alteration or destruction. This includes records retained electronically or by any other medium.
- 6.2. Records should be retained in the English language or be professionally translated into written English without delay at the request of the Authority. Where records are translated, the original language version should be retained by the regulated entity.
- 6.3. Where a regulated entity maintains records belonging to another regulated entity who is a client, it should ensure that client records are treated in accordance with the practices outlined in this Guidance.
- 6.4. A regulated entity should review its record keeping arrangements periodically including where third parties are involved, and make adjustments if necessary.
- 6.5. The Authority understands that as a normal course of doing business, there will be instances where regulated entities merge, transfer, or discontinue activities. Nonetheless, the Authority expects that regulated entities have a plan in place for the treatment of records once an entity ceases to do business. The Authority expects to be informed of where and how records may be accessed once a regulated entity ceases to carry on business. Notwithstanding cessation of business, record-keeping requirements should be met for the period required by the regulatory or other Acts.

## **7. Keeping of Accounting Records**

- 7.1. A regulated entity must record information likely to be required by the Authority in such a way as to enable a particular transaction to be identified at any time and traced through the accounting systems of the regulated entity, in particular in such manner as to enable early identification of balances and of the particular items which make up those balances.
- 7.2. A regulated entity must keep proper accounting records in such a manner that they are sufficient to show and explain the regulated entity's transactions and



commitments (whether effected on its own behalf or on behalf of others including clients) and in particular so that these records:

- a) disclose with accuracy and completeness the financial position of the regulated entity for a minimum of five years of operation or for a time period as required under the Anti-Money Laundering Regulations;
- b) demonstrate whether or not the regulated entity is or was at that time complying with its financial resources requirements, where applicable (e.g., capital requirements); and
- c) enable the regulated entity to prepare, within a time period specified by the Authority, any financial reporting statement required by the Authority as at the close of business for any date within the previous five years, and that the statement complies with the requirements of the Authority.

7.3. A regulated entity should ensure that its accounting records shall as a minimum contain:

- a) a record of all assets and liabilities of the regulated entity including any commitments or contingent liabilities;
- b) a record of all income and expenditure of the regulated entity explaining its nature;
- c) a record of all investments or documents of title in the possession or control of the regulated entity showing the physical location, the beneficial owner, the purpose for which they are held and whether they are subject to any charge;
- d) entries from day to day of all sums of money received and expended by the regulated entity, whether on its behalf or on behalf of others (including clients), and the matters in respect of which the receipt and expenditure takes place;
- e) entries from day to day of all purchases and sales of investments by the regulated entity, distinguishing those which are made by the regulated entity on its own account and those which are made by or on behalf of others (including clients); and
- f) entries from day to day of the receipt and dispatch of documents of title, which are in the possession or control of the regulated entity.

## **8. Maintenance of Records Outside of the Cayman Islands**

8.1. In most instances, regulated entities are not restricted from holding certain records outside of the Cayman Islands. In addition, the Authority may give



approval, where appropriate, to regulated entities to permit the maintenance of records outside the Cayman Islands.

- 8.2. Regulated entities that maintain their accounting and other records in a location outside of the Cayman Islands, should also ensure that:
  - a) The data is kept secure, and they mitigate against operational risk; and
  - b) They comply with the Confidential Information Disclosure Act.
- 8.3. When records are held outside of the Cayman Islands, regulated entities must ensure that the Authority will have access to records at all reasonable times in accordance with the relevant Acts and within the time period stipulated in 4.2.
- 8.4. Where a regulated entity has no physical presence in the Cayman Islands, there should be no restrictions to the access of records by the Authority regarding the entity or its clients.
- 8.5. Where records are maintained outside the Cayman Islands through outsourcing, storage, or other arrangements, the regulated entity remains ultimately responsible for record keeping requirements and accessibility to records by the Authority.
- 8.6. A regulated entity should not keep records outside the Cayman Islands if access to those records by the Authority is likely to be restricted or delayed by confidentiality or data protection restrictions. Where such restrictions exist, it is expected that the regulated entity maintain the same records within the Cayman Islands.

## **9. Electronic Records**

- 9.1. It is expected that regulated entities treat electronic records with the same requirements as paper-based records. The scanning of paper-based records, and the creation, retention, storage, and disposal of records, using emerging technologies such as cloud-based services should adhere to the same record-keeping standards as paper-based records.
- 9.2. The Authority understands that electronic records can be more practical than paper-based records for disaster preparedness and storage reasons. Record retention may be in the form of electronic records unless specified otherwise by regulatory or other Acts. Electronic records must be of good quality, be an accurate reflection of the paper-based record (where one exists), must be complete and unaltered, and be easily accessible and reproduced in hard copy.
- 9.3. The Authority expects that regulated entities use caution to prevent the premature destruction of paper-based records which have been converted to electronic records. A regulated entity should be satisfied that, inter alia, there are safeguards in place for the conversion of paper-based records. Legal, regulatory and



organizational requirements and recommendations should be key determining factors on the retention of paper-based records.

- 9.4. The conversion of any paper-based record to an electronic record should not hinder the availability of such records to the Authority. The use of technology to handle records does not absolve the regulated entity of any regulatory or legal obligations for record-keeping.
- 9.5. The Authority expects that regulated entities will comply with the Electronic Transactions Act (as amended).





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