



Cayman Monetary Regulatory Authority International

At the forefront of financial regulation, the Cayman Monetary Regulatory Authority International (CMRAI) is dedicated to upholding the highest standards of financial oversight and compliance. Our mission is to safeguard the stability and integrity of the global financial system by ensuring that financial services operate within a framework of transparency, accountability, and excellence.

As a trusted partner to financial institutions worldwide, CMRAI provides rigorous supervision, innovative solutions, and strategic guidance to foster a secure and thriving financial environment. With decades of experience and a commitment to global standards, we stand as a pillar of trust and security in an ever-evolving financial landscape.

With a legacy of excellence in financial oversight, the Cayman Monetary Regulatory Authority International (CMRAI) is a beacon of trust in the international financial community. Our role extends beyond regulation; we are innovators, collaborators, and protectors of the global financial ecosystem. By fostering compliance, promoting best practices, and embracing technological advancements, CMRAI ensures that financial services remain resilient and adaptable in a dynamic global market.

Our comprehensive approach to regulation encompasses a deep understanding of financial risks and a proactive stance on emerging challenges. We are committed to empowering financial institutions with the tools and guidance necessary to navigate complex regulatory landscapes, thereby contributing to global economic stability and growth.

1 Cayman Monetary Regulatory Authority International PRIVATE SECTOR
CONSULTATION STATEMENT OF GUIDANCE RECRUITMENT AND SELECTION OF
EMPLOYEES FOR TRUST AND CORPORATE SERVICE PROVIDERS A. Introduction
1. Section 34(1)(a) of the Monetary Authority Law (2018 Revision) (as amended) (MAL) 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 MAL as follows: When this Law requires private sector consultation in relation to a proposed measure i. 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.

2 3. The Cayman Monetary Regulatory Authority International (the Authority) seeks consultation and comment from the private sector associations concerning the following: a. Statement of Guidance on Recruitment and Selection of Employees for Trust and Corporate Service Providers. B. Background and Rationale 4. In recent years, there have been a number of offshore financial centres which provide a similar business model to that of the Cayman Islands (i.e. service providers such as trust companies, company managers supplying directorship services to their clients) that have seen appointed directorships that go awry resulting in directors being sued in US courts. More seriously, some locally based directors have been the subject of subpoenas issued by foreign regulatory authorities. In light of this reality and given the potential reputational risk to the jurisdiction, industry and the economy as a whole, the development of guidance relating to recruitment, selection and competence of employees of TCSPs is crucial. 5. In response to the above criticisms relating to TCSPs and anecdotal evidence that points to a need for improvement in the sector, the Group of International Finance Centre Supervisors (GIFCS) issued the Standard on the Regulation of Trust and Corporate Service Providers (SRTC) in October 2014. 6. Currently, the standards relating to the recruitment, selection and competence of TCSP employees are rated as not observed by the Authority. However, as a member of GIFCS and a contributor to the standards themselves, the Authority must ensure adherence. Further, member jurisdictions have been required to have standards in place as of October 2017 following a three year transitional period. Therefore, the Authority should have already implemented the standards. 7. The Authority is scheduled to undergo an assessment against the SRTC in September 2018 and in preparation for this assessment it would be prudent to ensure that any identified gaps are addressed as quickly as possible. The gap that is to be addressed in

the paper and via the proposed SoG relates to the SRTC s requirement for regulators to ensure that TCSPs implement controls in respect of the recruitment and ongoing assessment of employees. 8. The proposed SoG will fill an important gap in the Authority s framework in respect of TCSPs. The implementation of this measure will ensure that the Authority s framework more closely aligns with Part 3, Section D (2) of the SRTC and is in keeping with international good practice generally. A. Analysis Overview 9. This section will provide the following: GIFCS International Standards Current Regulatory Framework Jurisdictional Comparison 3 Costs and Benefits B. International Developments/Self-Assessments 10. The SRTC was issued in October 2014. Subsequent to this, the Authority conducted a detailed self-assessment against the standards outlined in the SRTC in 2015. The self-assessment revealed that the Authority s regulatory framework does not meet the standard in respect of recruitment and selection of employees. See Appendix 3 CMRAI s Self-Assessment Standards Relating to the Recruitment and Selection of Employees. 11. The GIFCS standard does not yet form part of the International Monetary Fund s assessment. However, GIFCS is recognised as a leading authority on the regulation of TCSPs and, notably, CMRAI s managing director is the deputy chair of GIFCS. A competing jurisdiction, Jersey, has undergone an assessment against the standard and feedback on the process strongly suggests that Jersey s assessment results were positive. 12. This effort by CMRAI to set standards and offer guidance for TCSPs relating to the recruitment and selection of employees is not entirely new as several policies and procedures already require certain key individuals to possess competence and to be assessed on an on-going basis. International standard setters have all established the importance of consumer protection in financial stability, public confidence and public trust as well as the crucial role that competence, skilled employees plays in achieving these objectives. C. Current Regulatory Framework Recruitment of Employees Standards Legislation 13. The 1 regulatory laws do not specifically require all TCSP employees to be competent nor does it require TCSPs to have recruitment and selection policies and procedures in line with the standards in the SRTC. However, there is a requirement in legislation for particular employees namely persons in controlled functions to be fit and proper. The regulatory laws state that fitness and propriety includes a person s: i. honesty, integrity and reputation, ii. competence and capability; and iii. financial soundness. 14. Therefore, the Authority s legal framework is in support of the recruitment of competent, honest, and honourable employees in specific key roles at the very minimum. Persons providing directorships 15. There is a very clear responsibility for persons acting as professional director to have sufficient competence to carry out their role. The DRLL lists a person s fitness and propriety as essential criteria for being registered as a professional director i.e. directors with 20 or more directorships. The DRLL 1 Banks and Trust Companies Law (2018 Revision) s3; Companies Management Law (2003 Revision) s5(8); 4 explicitly gives the Authority the power to suspend or revoke the licence and or registration of any director whether registered or professional director if the Authority is of the opinion that a person is not fit and proper to carry out his or her duties as director. The DRLL establishes that fitness and propriety must encompass competence and capability considerations. International standard setters have collectively established that competence as it relates to persons in controlled functions must also take into consideration ongoing training and development. Promoting and enhancing market confidence 16. The 2 MAL speaks to the Authority s duty to promote and enhance

confidence in the sector. Based on the criticisms of the TCSP sector, there is a strong case to be made that an improved regulatory framework for the sector will go a long way to improving investor trust and consumer confidence. Regulatory Policies and Procedures 17. 3 The Licensing Policy for TCSPs explicitly requires applicants to be able to demonstrate that it has adequate resources, in terms of manpower, systems and expertise to meet its objectives. Ongoing training and continuing professional development

18. The SRTC has a specific requirement that employees' competence is assessed on an on-going basis and that they have access and are required to undertake ongoing training and professional development. Although, the Regulatory Policy on Fitness and Propriety does mention ongoing training and continuing professional development directly, there is no guidance on CMRAI's expectations for maintaining knowledge or what constitutes continuing professional development. 19. The following is a summary of the current guidance/policies that address the matter of competence and ongoing training.

Regulatory Policy: Fitness and Propriety Section 5 - Obligations of the Licensee 5.2 The licensee should be able to satisfy the Authority that the person proposed to act in a controlled function possesses sufficient competence and capability for the particular function. It is expected that the assessment conducted by the licensee will take place during the recruitment stage and on an ongoing basis, and that the licensee make every effort to verify qualifications, experience, references and membership of professional bodies. It is also expected that the licensee will conduct probity checks on criminal history, sanctions, legal proceedings, and other similar matters. Regulatory Policy on Fitness and Propriety Section 2.2 Introduction 2 Monetary

Authority Law (Revision 2018) Section 6(3); Directors Registration and Licensing Law, 2014 s12 & s25 3 Statement of Guidance Licensing of Unrestricted, Restricted and Nominee Trust Companies Section 2.9.1.2 5 2.2 ...competence and capability relate to the educational background, work experience of the person, and/or continued professional development of the person as it relation to the job he or she will be performing...

Regulatory Procedure: Assessing Fitness and Propriety Section 5 Assessment of Previously Approved Person in the Absence of a New Application 5.1.3 The person is expected to continue to meet the criteria of fitness and propriety for the entire period during which the person acts in a controlled function. For instance, failure to maintain appropriate qualifications or memberships may raise doubts about the person's continuing fitness. Statement of Guidance: Corporate Governance Section 5.3

Structure and governance of the Governing Body 5.3.1 (d) should have a balance of skills, knowledge, and experience among Directors so that the Governing Body can effectively oversee the business of the regulated entity; D. Jurisdictional Comparison

20. The Policy and Development Division (P&D) reviewed five jurisdictions namely 4 The Bahamas, 5 Bermuda, 6 British Virgin Islands, 7 Guernsey and 8 Jersey. These jurisdictions were chosen because of the existence of a robust TCSP sector, and because they are currently GIFCS members that are required to apply the SRTC. P&D was keen to give Jersey Financial Services Commission's (JFSC) approach detailed attention; given that Jersey's recent GIFCS assessment has been favourable.

4 Bahamas General Information and Guidelines for Licence Applications Section 4 and General Information and Application Guidelines for Private Trust Companies and their Registered Representatives Section 5.2 (p) 5 Bermuda Information for Prospective Applicants February 2011 centre/policy-and-guidance/TRUST%20II/Trusts%20-%20Information%20for%20Prospective%20Applicants.pdf; Trust Act 2001 Statement of

Principles 2010 p.5 and p.11, Code of Practice 6 BVI Application for Approval of Directors, Compliance Officers and Senior Officers Form A

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7 Guernsey Code of Practice Trust Service Providers

%20Trust%20Service%20Providers_0.pdf Guernsey Code of Practice Corporate Service Providers %20Corporate%20Service%20Providers_0.pdf, Code of Practice Company Directors 8 Jersey Code of Practice for Trust Company Business 21-march-2018.pdf 6

21. Of the jurisdictions considered, all required licensees, at the time of application or a change in business plan to demonstrate how they intend to ensure that they have adequate and competent staff to carry out their business operations. All the jurisdictions also had guidance in their fitness and propriety measures that required that persons in key functions have and maintain competence throughout the duration of their tenure in a specific role and to require licensees to perform background checks on persons in key functions including criminal history, regulatory censure, legal proceeding, sanctions etc. However, Jersey Bermuda and Guernsey were the only jurisdictions with very specific guidance relating to the recruitment, selection and competence of trust company business employees at every level. Bermuda 22. BMA's Code of Practice for Trust Business Section 7.7 explicitly requires licensed undertaking to have available suitable numbers of staff who are appropriately trained and competent to discharge its fiduciary duties effectively. It should ensure that the responsibilities and authority of each member of staff are clear and appropriate to his or her qualifications and experience, and that staff receive the necessary training appropriate for their roles. A licensed undertaking also needs to formulate and keep up to date plans for staff training and development. Guernsey 23. Guernsey Code of Practice Trust Service providers and Company Service Providers requires their TCSPs to have effective management and systems and suitably chosen, trained and supervised staff to comply with this principle. TCSPs should ensure that the responsibilities and authority of each member of staff are clear and appropriate to his or her qualifications and experience and that staff receive any training which is necessary for their roles. TCSPs should formulate and keep up to date plans for staff training and development, including training in relation to anti-money laundering and countering the financing of terrorism, and for disaster recovery. 24. In addition to providing guidance on the recruitment of competent, well trained employees, the Guernsey Financial Services Commission also outlines expectations for persons providing directorships in its 9 Code of Practice for Company Directors. This is in line with the Authority's SoG which dedicates a section to Directorship Services. This is however, is not a requirement under Part 3 (D) 2 and 3 of the SRTC. Jersey 25. In the Code of Practice for Trust Companies (Revised 21 st March 2018) (the Code), the JFSC stipulates that its trust company business employees should collectively have a balance of qualifications necessary to fulfil their technical functions and suitable skills and experience to fulfil their non-technical functions. The Code also specifies that CPD is a compulsory requirement for all trust company business employees.

9 Guernsey Code of Practice for Company Directors practice-Directors-2009.pdf 7 Table 1 Jurisdictional Comparison against SRTC Standards SRTC Standards Bahamas Bermuda BVI Guernsey Jersey 2.1 The Regulator should require a TCSP to implement controls in respect of the recruitment and ongoing assessment of employees. The Regulator should require that the TCSP: 2.2.1 has recruitment procedures to ensure it employs employees who are competent to perform

their roles; appropriately supervises its employees regularly reviews the competence of its employees, and that the level of competence is appropriate to the nature and size of the business; and ensures all employees remain competent for the role they undertake by undertaking appropriate training or professional development.

Key Functions Key Functions 2.2 The Regulator should require TCSPs to have procedures in place to control recruitment practices in regard to all individuals including Key Persons. The Regulator should require the TCSP to, prior to hiring an employee, give due consideration to an applicant's: criminal records; Key Functions Key Functions Key Functions Key Functions regulatory censure; Key Functions Key Functions Key Functions Key Functions professional reprimands; and Key Functions Key Functions Key Functions Key Functions other formal censure, discipline or public criticism. Key Functions Key Functions Key Functions Key Functions 3.1 The Regulator should require that a TCSP establishes and implements policies and procedures that require its employees, including Key Persons, to undertake an annual programme of training and professional development Key Functions Key Functions 8 E. Proposed Statement of Guidance 26. The proposed Guidance aims to close gaps in the Authority's regulatory framework relating to TCSPs. In particular, the measure intends to provide guidance to TCSPs on their recruitment and selection practices as well as require them to have policies and procedures in place for the ongoing monitoring of competency organization-wide and provision of ongoing training and continued professional development. The measure also intends to provide persons providing directorships some guidance on the Authority's expectations as they carry out their fiduciary responsibilities.

27. The following table summarizes how the proposed SoG addresses the standards outlined in the SRTC: Table 2 Components of the SoG Recruitment and Selection of Employees for Trust and Corporate Service Providers SRTC Standards SoG Requirements

2.1 The Regulator should require a TCSP to implement controls in respect of the recruitment and ongoing assessment of employees. The Regulator should require that the TCSP:

Recruitment Policies 2.1.1 has recruitment procedures to ensure it employs employees who are competent to perform their roles; 5.1.1. Licensees should establish and maintain appropriate recruitment policies and procedures that have been reviewed and approved by senior management and the board of directors. 5.1.2. Recruitment policies and procedures should appropriately capture (1) the licensee's overarching and fundamental principles of recruitment and selection, (2) establish the licensee's commitment to fair and transparent recruitment processes and (3) include a methodology for assessing the fitness and propriety of candidates offered contracts of employment. 5.1.3. Recruitment policies and procedures should be periodically reviewed and updated to ensure that they continue to align with business and staffing realities. Supervised Staff 2.1.2 appropriately supervises its employees 5.1.4. Licensees should have effective management and systems to ensure that employees are appropriately supervised. 5.1.5. Policies and procedures should be in place that clearly outline reporting relationships and escalation processes. These policies and procedures should be well documented and communicated to staff. Review Competence 2.1.3 regularly reviews the competence of its employees, and that the level of competence is appropriate to the nature and size of the business; and 5.1.6. To ensure employees remain competent and able to effectively carry out their role and responsibilities, licensees should review the competence, qualifications and skills of their employees on an ongoing basis. 5.1.7. Reviews should take into consideration any additional skill or

qualification needs of employees who have either entered new roles, or where the roles have changed, or have expanded in scope. Reviews should also take into account any changes in the nature, size and complexity of the overall business operations. Training and Development 2.1.4 ensures all employees remain competent for the role they undertake by undertaking appropriate training or professional development.

5.1.8. Licensees should have a documented policy which sets out ongoing training and CPD requirements for employees. Licensees should be sure to give adequate consideration to the scope of their business activities as well as the prevailing regulatory framework and market when developing their CPD Policy.

2.2 The Regulator should require TCSPs to have procedures in place to control recruitment practices in regard to all individuals including Key Persons. The Regulator should require the TCSP to, prior to hiring an employee, give due consideration to an applicant's:

2.2.1 criminal records;

5.1.9. Licensees should also be able to demonstrate that they have assessed and verified applicants' references and membership of professional bodies, criminal history, regulatory censure, sanctions, legal proceedings and any other formal censure, discipline or public criticism at the stage of recruitment.

2.2.2 regulatory censure;

2.2.3 professional reprimands; and

2.2.4 other formal censure, discipline or public criticism.

Continued Professional Development

3.1 The Regulator should require that a TCSP establishes and implements policies and procedures that require its employees, including Key Persons, to undertake an annual programme of training and professional development

5.1.10. Licensees should have a documented policy which sets out ongoing training and CPD requirements for employees. Licensees should be sure to give adequate consideration to the scope of their business activities as well as the prevailing regulatory framework and market when developing their CPD Policy.

28. As shown above all of the standards relating to the recruitment, selection and competence of TCSP employees will be met by the proposed measure. Note, the above table is not exhaustive. For a full scope of the requirements listed in the SoG please see Appendix 2.

29. Outside of the standards issued in the SRTC, the SoG also addresses the following matters:

a. Directorship Services Obligations;

b. Acceptable activities for CPD; and

c. Record keeping

F.

Cost/Benefit Analysis

30. The following table shows the significant costs and benefits associated with the issuance of the proposed SoG on the Recruitment and Selection of Employees for Trust and Corporate Service Providers.

Costs	Benefits
1. Gazette and publication of new measure will have costs associated with it.	1. Alignment with international standards and increased regulatory transparency enhances the Authority's reputation as a regulator. (ongoing benefit)
2. Costs associated with the amendment of internal supervisory manuals and procedures.	2. Meets the statutory obligation to protect consumers and investors by ensuring the requirement for TCSP employees and persons providing directorships to remain competent is met (significant ongoing benefit).
3. Training of staff.	3. Increased compliance of key functions to maintain the corporate governance and fitness and propriety expectations already set by the Authority (ongoing benefit).
4. Answering queries from industry and general public on new requirements in the near term has a time and labour cost associated with it.	4. TCSPs may be less likely to fail or become a problem entity due to increased competence staff. This can result in less resources necessary for enforcement or any potential wind down activities.
5. Added time to check new requirements during onsite inspections	

Cayman Islands

1. To ensure that the SoG is effective, there could be some costs associated with raising the awareness of the general public,

TCSPs or potential licensees: o press releases o presentations o educational workshops

2. Some potential licensees may find the requirements outlined in the SoG too onerous or prescriptive and may decide against the Cayman Islands as their jurisdiction of choice. 1.

Raise the jurisdiction's profile as an international financial centre and removes some international criticism of Cayman Islands directorship services practices, which entices new companies and investors to do business in the Cayman Islands. (ongoing benefit) 2. More protection for prospective and current clients of TCSPs. (ongoing benefit) 3. Job creation because of the potential creation of new training courses for TCSP employees. (ongoing benefit) 4. Stronger regulatory framework making the jurisdiction less vulnerable to reputational risk. (ongoing benefit) TCSP 2. Applicants must bear the costs of meeting the requirements outlined in the SoG, including cost of in-house training or other training courses, costs associated with time 1. Competent well selected employees enhance the TCSP's sustainability An entity committed to having a well trained and experienced staff is more able to quickly identify and resolve any systemic issues thus reducing the likelihood of costly 11 Costs Benefits away from the office, cost of drafting policies and procedures. TCSPs may also incur cost related to salary increases commensurate with increased qualifications and training. corporate crises and scandals. Matters may arise which a TCSP was unable to anticipate but with a staff complement that is geared to manage such possibilities, a TCSP can respond quickly in order to safeguard its reputation and future which can affect profitability and long-term viability. 2. Increases trust - TCSPs that are cognisant of the role they play in wider society will typically seek to behave in a transparent manner by providing clear and accurate information to their stakeholders on a regular basis. When all stakeholders feel able to rely upon the data provided by regulated entities this leads to increased levels of trust and regulated entities are able to develop stronger, longstanding relationships with their stakeholders. The benefits that can be reaped are numerous and varied including repeat business customers. Clients 1. TCSPs may pass the higher operating costs to their clients. 1. Clients benefit from having more suitably qualified persons managing and administering their assets. 2. In the case of clients that seek Corporate Service Providers to provide directorships, they benefit from more competent and well trained directors who help manage risk and provide overall better governance. Better governance can help clients earn more profits over time. 3. In the case of clients that seek Corporate Service Providers to provide directorships, they can benefit from a lower probability 12 Costs Benefits of reputational risk. In recent times, directors have been sued and subpoenaed for acting criminally, negligently etc. This could negatively impact the reputation of a client. The requirement for TCSPs to conduct thorough background checks consisting of competency verifications and criminal history, disciplinary proceeding etc. can reduce the occurrence of unscrupulous or incompetent directors which in turn reduces the probability of reputational risk. E. Comments and Consultation 31. The Authority seeks consultation through written comments and representations from the private sector associations concerning a. Statement of Guidance on Recruitment and Selection of Employees for Trust and Corporate Service Providers 32. The Authority must receive representations by Monday, 29 October, 2018. 33. Comments and representations must be addressed to: The Managing Director Cayman Monetary Regulatory Authority International P.O. Box 10052 80e Shedden Road Elizabethan Square Grand Cayman KY1-1001 Cayman Islands : 345-949-7089 Fax: 345-946-5611 : and copied to [] 34. 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.