



Rule and Statement of Guidance on Market Conduct for Trust and Corporate Service Providers and Company Managers

03 September 2024

Key takeaways

- The RSOG builds upon and clarifies existing market conduct standards for TCSPs and Company Managers where the underlying requirements are generally the same but with some differences.
- The RSOG implements market conduct rules as well as guidance, which increases CIMA's enforceability of breaches of these measures.
- Regulated Persons should proactively identify any gaps in their policies and procedures and update them accordingly to ensure compliance with the RSOG by 25 November 2024, given the increased enforceability and the differences. Walkers can advise and assist further if required.

The Cayman Islands Monetary Authority has issued a new Rule and Statement of Guidance on Market Conduct for Trust and Corporate Service Providers and Company Managers.

Introduction

On 22 May 2024, the Cayman Islands Monetary Authority (the "**Authority**") issued a [new Rule and Statement of Guidance \("RSOG"\)](#) on Market Conduct for Trust and Corporate Service Providers ("**TCSPs**") and Company Managers, replacing the previous Statement of Guidance ("**Previous SOG**") for TCSPs issued in March 2019. The RSOG will come into effect on 25 November 2024. The RSOG establishes minimum requirements and guidance to TCSPs and Company Managers to ensure fair treatment of clients and general protection of clients' assets and monies.

The RSOG builds upon the existing standards in the Previous SOG to align with international standards and address the lack of enforceability, with the aim of enhancing integrity, transparency, and accountability.

Who does the RSOG apply to?

The RSOG applies to "Regulated Persons," which include natural or legal persons or arrangements approved, licensed, registered, or supervised by the Authority under the Banks and Trust Companies Act ("**BTCA**") and the Companies Management Act ("**CMA**"). This expands the scope of the RSOG to

controlled subsidiaries that are registered under the BTCA to provide trust services, in addition to licensees under the BTCA and CMA. These licensees are:

1. holders of a Trust Licence, Restricted Trust Licence, or Nominee Trust Licence issued under the BTCA; and
2. holders of a Companies Management Licence or Corporate Services Licence issued under the CMA.

The Authority will assess Regulated Persons' compliance with the RSOG in a manner proportionate to the size, complexity, structure, nature of business, and risk profile of their operations.

What are the Rules?

The Rules in the RSOG establish minimum requirements which must be complied with. The key requirements are summarised below:

Integrity

- Regulated Persons must conduct its business with integrity and honesty, act with due skill, care and diligence, and ensure the fair treatment of its clients.
- A clear and precise written record of communication with clients must be kept at all times.

Conflicts of Interest

- Regulated Persons must have a written conflict of interest policy, identifying circumstances which constitute or may give rise to a conflict of interest with clients and specifying procedures and measures to follow to manage conflicts.

Advice and Use of Discretion

- Regulated Persons must take all reasonable steps to obtain sufficient information to exercise their discretion to make decisions for clients, that such discretion is used for a proper purpose and decisions are evidenced in writing.

Client Money and Assets

- Client money must be clearly segregated from money and accounts of the Regulated Person and segregated from other client's money and accounts, unless impracticable or impossible to do so.
- Client money held on trust must not be dealt with amongst other things, until the Regulated Person receives written confirmation that the account is a client account and that money standing to credit of that account is held by the Regulated Person as a fiduciary.
- Terms upon which client money is held must be disclosed to the client.
- Client accounts must be reconciled promptly.
- Regulated Persons must implement appropriate policies and procedures in relation to holding, safeguarding and administering client money and other assets, including at a minimum dual signatures or dual control for client money payouts and appropriate sole, dual or multiple authorisations for handling its client assets, as well as measures to prevent forms of misappropriation and misuse of client's money or assets such as theft or fraud.

Resources

- Regulated Persons must establish and maintain appropriate policies, procedures and controls to monitor and ensure it always has the requisite capacity and resources to provide the agreed services to its clients, including requirements on acting for clients under a power of attorney.

Advertising and Communication

- Regulated Persons must ensure its advertising and communication practices, amongst various things, are clear, ethical, factual and not misleading, false and deceptive, do not violate applicable laws and regulations (or promotes such breaches) and as far as possible do not place Cayman Islands at risk of being brought into disrepute.

Terms of Business

- Regulated Person must enter into written terms of business with clients which must include certain minimum elements including a clear description of the services, any fees chargeable, the basis for calculation, and ability to make changes to such basis, if any, a complaints handling procedure, and any termination of relationship or transfer of services is on at least on one month's notice.
- Prior to the termination of a client relationship or transfer of services, Regulated Persons must notify the Authority, in writing, within 14 business days: the reasons for termination or transfer; any other material changes which affect the Regulated Person's registration with the Registrar of Companies; the licence with the Authority' or fulfilment of fiduciary and regulatory obligations, as well as the steps taken or intends to take to address the change.

Directorship services

- There must be appropriate policies and controls to properly assess and determine those acting as directors are fit and proper, suitable, competent, understand their duties and can comply with applicable laws.

Complaints Handling

- Regulated Persons must have an effective documented complaints handling system and procedures for the proper, fair and to ensure the just management of complaints, including maintaining an up-to-date and comprehensive complaints log which must contain certain details including date of complaint, details of the complaint and a summary of responses including dates.
- Complaints must be acknowledged in writing within five business days upon receipt unless expressly agreed to the contrary.

What are the consequences for failing to comply with the RSOG?

If a Regulated Person fails to comply with the RSOG, the Authority's policies and procedures contained in its Enforcement Manual will apply in addition to any other powers provided for under relevant legislation. The Authority's enforcement actions for breaches of the RSOG include licence suspension and, in particularly serious cases, licence revocation.

What are key differences between requirements under the RSOG and the Previous SOG?

The underlying requirements of the RSOG and the Previous SOG are generally similar. While they do overlap, the RSOG particularises and expands on certain elements of the Previous SOG. The fundamental difference is the RSOG implements rules and guidance, while the Previous SOG only provided guidance. The RSOG accordingly clarifies the minimum market conduct requirements for TCSPs and Company Managers thereby increasing the enforceability of these measures.

Some other key differences to note are: (i) the RSOG acknowledges that Regulated Persons can rely on group-wide market conduct practices or frameworks to meet the RSOG provided it is commensurate with the size, complexity, structure, nature of business and risk profile and any gaps identified are addressed in a tailored framework that complies with the RSOG and other Cayman Islands requirements; (ii) the scope of the RSOG has been expanded to include persons registered (not only licensed) under the BTCA; (iii) the RSOG requires certain inclusions in a conflict of interest policy; (iv) more detailed requirements on client money and assets, including highlighting the prohibition against holding client accounts for sanctioned entities or shell banks; (v) the RSOG clarifies the details that must be included in a complaints log, that complaints must be acknowledged within five business days and Regulated Persons should inform complainants of their option to escalate the matter to the Authority or the Ombudsman of the Cayman Islands as applicable when a complaint is closed; and (vi) the Authority needs to be notified within 14 business days prior to the termination of a client relationship or a transfer of services.

Next steps

The RSOG builds upon and refines existing market conduct standards of the Previous SOG, ensuring that TCSPs and Company Managers continue to operate with the highest levels of integrity, transparency, and client trust. Regulated Persons should already be compliant with the Previous SOG and should aim to identify and address any gaps in their policies and procedures to ensure compliance with the RSOG when it comes into effect on 25 November 2024. Key focus areas include improving complaints handling, enhancing conflicts of interest disclosures, and reviewing advertising risks and language to ensure compliance with the new standards.

Based on our experience, the Authority is committed to taking a granular and critical approach to assessing the need for enforcement, which is likely to extend to the RSOG now that rules have been implemented. Therefore, it is advisable for Regulated Persons to proactively update their policies, procedures and practices to meet the new requirements and mitigate the risk of regulatory action. For further assistance or questions regarding the RSOG, please contact a member of the Regulatory & Risk Advisory practice group, or your usual Walkers contact.