

APPENDIX 1

EXTERNAL RELATIONS

D1 – Dealing With Requests For Assistance From an Overseas Regulatory Authority (ORA)

A. Legislative Framework

1. The responsibility of the Cayman Islands Monetary Authority (the “Authority”) to provide assistance to overseas regulatory authorities (“ORA”) arises from the cooperative functions of the Authority under section 6 (1) (c) of the Monetary Authority Law (2018 Revision) (“the MAL”). The scope of the duty is set out in more detail in sections 50 (3) to (8) and 51 of the MAL.
2. The Authority will generally assist an ORA in the exercise of its regulatory functions including the conduct of civil and administrative proceedings to enforce laws, regulations and rules administered by the ORA. It may also consent to the use of information shared for the purposes of the criminal investigation or prosecution of a charge which pertains to the contravention of laws and regulations administered by the ORA or to assist a self-regulatory organisation with surveillance and enforcement activities where it is involved in the supervision of conduct that is the subject of the request.
3. An ORA is defined in section 2 of the MAL as “an authority which, in a country or territory outside the Islands, exercises functions corresponding to;
 - a) any of the regulatory functions of the Authority; or
 - b) any additional functions as may be specified in regulations including the conduct of civil and administrative investigations and proceedings to enforce laws, regulations and rules administered by that Authority”.
4. As no regulations have been enacted to date, only paragraph (a) of the above definition is relevant for the purposes of these procedures.
5. Pursuant to section 34 (9) of the MAL, where the Authority is satisfied that assistance should be provided to an ORA, the Authority may issue a direction to a person to provide specified information, produce specified documents or give specified assistance.
6. Under section 51 of the MAL the Authority may, after consultation with the Minister for Financial Services, enter into a Memorandum of Understanding with Overseas Regulatory Authorities. The Minister shall be notified by the Authority of each MOU and

the MOU is to be published promptly in the Gazette. The Authority must act in accordance with the MAL.

B. Procedures

7. Where a request from an ORA is received by the Authority the following procedures shall apply:
 - (1) The supervisory or other division/department receiving the request, shall forward a copy of the request along with a standard form to the Legal Division which addresses the following matters:
 - (a) the name of the requesting authority;
 - (b) the nature of the information or other assistance requested such as the description of the facts underlying specific questions to be asked and sensitivity of the matter;
 - (c) whether the entity or person which is the subject of the request is regulated by the Authority and/or whether the information requested is likely to be found in the Cayman Islands;
 - (d) the information requested serves no other purpose than those directly related to fulfilling a supervisory and/or regulatory function of the Requesting Authority i.e. a valid purpose;
 - (e) the information requested serves the purpose of ensuring compliance with Laws and regulations related to the request or Requesting Authority; or
 - (f) the information requested shall not be used for any other purpose than those specified in the request or will not be disclosed without prior consent.
 - (2) Upon receipt of a request for assistance, the Legal Division will first determine whether the requesting body falls within the definition of an ORA within the terms of section 2 of the MAL. In deciding whether assistance should be granted, regard should be had to the matters set out in section 6(2), (3), and section 50(4), (8) of the MAL.
 - (3) As such, the Legal Division will review all requests for assistance against the criteria set out in section 50 (4) of the MAL such as whether:
 - (a) corresponding assistance would be given to the Authority in the recipient jurisdiction;
 - (b) the inquiries relate to a breach of a legal requirement which has a parallel or involves the assertion of a jurisdiction recognized in the Cayman Islands; and
 - (c) it is in the public interest to give the assistance sought.
 - (4) The Legal Division will also have regard to the provisions of section 50(8) of the MAL which require that before the requested assistance can be provided-
 - (a) the Authority must be satisfied that the recipient authority is subject to adequate legal restrictions on further disclosures;

- (b) an undertaking has been provided by the recipient authority to not disclose information without the prior consent of the Authority;
 - (c) the Authority must be satisfied that the assistance requested is required for the regulatory purposes of the recipient authority;
 - (d) the Authority must be satisfied that information provided will not be used in criminal proceedings against the person providing the information other than for an offence of perjury,
8. The Legal Division will make a record of the request, which will include a file number. All further correspondence relating to a particular request must include a reference to the internal file number for the purpose of keeping track of the requests and making input into the ORA log kept by the Legal Division.
 9. The Legal Division will return to the supervisory division a memorandum indicating whether or not the request is in conformity with the requirements of the MAL and noting particularly whether any further undertakings required by Law or other additional information need to be provided by the requesting ORA.
 10. The supervisory or other division on receiving a memorandum from the Legal Division shall reply to the ORA with the information requested or where a further undertaking is required by the MAL or additional information is necessary, require the ORA to provide the undertaking or additional information before any information is provided.
 11. The supervisory or other division will endeavour to acknowledge the receipt of the request to the requesting ORA within three (3) business days of receiving the request. With respect to routine requests (e.g., regulator to regulator requests such as confirmations in relation to a regulated entity's identity and good standing) the Authority endeavours to complete a request within 30 business days of the receipt of the request subject to receiving all the information and consents required to process the request. In case of a request that is non-routine, the Authority endeavours to complete within 60 business days where it is practical to do so i.e., where the Authority has received all the information and consents required to process the request, and there are no extraordinary circumstances or technical impediments that prevent completing the response (e.g. outstanding litigations before the court).
 12. The supervisory or other division will as a general practice, within 24 hours of responding to a request forward a copy of its response to the Legal Division for the purpose of updating the ORA log with respect to each request.
 13. Where the request involves the Authority giving its consent to use or onwardly disclose the information for the purposes of assisting a criminal investigation or prosecution, the Authority will also ensure that the requirements of section 50 (3)(c)(iii) have to be met.

14. Where it becomes necessary to share information provided with other local, regional, state, federal or international institution, the following requirements shall be met by the Authority where it is the “Requesting Authority”:
 - (1) notify the Requested Authority promptly;
 - (2) obtain prior explicit consent for onward disclosure (where necessary);
 - (3) prior to passing on information, ensure that the recipient agrees to maintain the confidential status of the information provided and has legal authority to do so; and
 - (4) use all reasonable legal means to protect the confidentiality of the information or to resist an enforceable demand where no consent for onward disclosure has been given
15. All responses (other than a holding response) shall be processed by the Legal Division. The Legal Division may however, request another division to respond to a particular request or to carry out related tasks to satisfy a request as the circumstances may require. Copies of any information provided (or an inventory thereof) shall be retained by the division in question.
16. Where the provision of assistance to an ORA requires the Authority to exercise its powers under Section 34 (9) to direct a person to provide specified information, produce specified documents or to give specified assistance, the Legal Division must review and sign off on the direction issued by the Authority.
17. For the avoidance of doubt, where the request for assistance is made pursuant to an MOU or Multi-lateral MOU, the Legal Division will assess and determine each request on a case-by-case basis and the procedures outlined above will also apply.