



## **PERSONAL QUESTIONNAIRES AND PERSONAL DECLARATIONS GUIDANCE NOTES**

### **INTRODUCTION**

This document is intended to provide assistance by highlighting and clarifying areas of uncertainty that may arise when completing a Personal Questionnaire (“Form PQ”) or a Personal Declaration (“Form PD”) (collectively, the “Forms”). This document is not a substitute for the regulatory Laws<sup>1</sup> or rules and guidance made thereunder and reference should be made to them before completing either of the Forms.

It is a requirement under the regulatory Laws that licensees and individuals in Prescribed Positions be fit and proper.<sup>2</sup> In order to assess whether this requirement is satisfied, the Commission gathers information about any individual who is intended to assume a Prescribed Position. As part of its general functions, the Commission requires that individuals being appointed to a Prescribed Position complete a Form PQ to evidence their fitness and propriety. The Forms are designed so that individuals can provide information to show that they are “fit and proper” to undertake the Prescribed Position, both at the outset and on an ongoing basis.

Some of the regulatory Laws provide that appointments to certain Prescribed Positions may not be filled until the Commission has approved or not objected beforehand, and, in other instances, the Commission may object to the appointment following receipt of notification

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<sup>1</sup> The Financial Services Commission (Bailiwick of Guernsey) Law, 1987, The Banking Supervision (Bailiwick of Guernsey) Law, 1994, The Regulation of Fiduciaries, Administration Businesses and Company Directors etc (Bailiwick of Guernsey) Law, 2000, The Insurance Business (Bailiwick of Guernsey) Law, 2002, The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, The Protection of Investors (Bailiwick of Guernsey) Law, 1987, The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008, The Criminal Justice (Proceeds of Crime)(Legal Professionals, Accountants and Estate Agents)(Bailiwick of Guernsey) Regulations, 2008, The Financial Services Commission (Site Visits) (Bailiwick of Guernsey) Ordinance, 2008, The Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) Ordinance, 2008; and The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, in each case, as amended from time to time.

<sup>2</sup> The Banking Supervision (Bailiwick of Guernsey) Law, 1994, Schedule 3; The Regulation of Fiduciaries, Administration Businesses and Company Directors etc (Bailiwick of Guernsey) Law, 2000, Schedule 1; The Insurance Business (Bailiwick of Guernsey) Law, as amended, Schedule 7; The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended, Schedule 4; The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended, Schedule 4; The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, Schedule 2.

about the Prescribed Position appointment.<sup>3</sup> Please refer to the relevant regulatory Law if you are uncertain of whether the role in question is a Prescribed Position.

If, after reading these Guidance Notes, and the relevant regulatory Law, you have any further questions concerning the completion of the Forms, you are asked to contact the relevant division of the Commission.

## **DOCUMENTATION**

The Commission requires that one of two Forms be completed. A Form PQ must be completed if the individual has not previously submitted a Form PQ to the Commission. In all other cases, a Form PD should be submitted instead.

### **1. Persons Required to Submit a Form**

A completed Form must be submitted where an individual is to be / has been appointed to a Prescribed Position. Under the regulatory Laws, the Commission also has the power to request that an individual provide it with any information and documents it requires. This may include the completion of a Form PQ, regardless of whether the role or position is a Prescribed Position.

### **2. Submission of Documentation**

Copies of Forms will not be accepted by the Commission and will not normally satisfy the notification requirements of the regulatory Laws. Only original signed and dated Forms will be accepted by the Commission as satisfying the regulatory Laws' notification requirements. However, in certain circumstances, and with the prior agreement of the Commission, a copy of the Form and its attachments may be submitted for consideration in advance of the original signed Form.

### **3. Licensee Consideration**

Licensees and prospective licensees are expected to have performed sufficient due diligence to be satisfied that the information contained in a Form is accurate and complete prior to its submission to the Commission. In this context, the term "licensee" includes those businesses registered as non-regulated financial services businesses.

### **4. Completeness**

Disclosures made in a Form must be full, frank and unambiguous.

If there is any doubt about the relevance of information, it must be included. If the Commission's review of a Form reveals any matter that has not been disclosed, an objection or refusal to approve the appointment may be raised or the Commission's consideration of an individual may be delayed. The provision of inaccurate or

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<sup>3</sup> The Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended, sections 14 and 22A; The Regulation of Fiduciaries, Administration Businesses and Company Directors etc (Bailiwick of Guernsey) Law, 2000, section 14; The Insurance Business (Bailiwick of Guernsey) Law, as amended, sections 25 and 29; The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended, section 27; The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended, section 28A.

incomplete information may be taken into account when considering whether or not an individual is fit and proper.

It should not be assumed that information is known to the Commission because it is in the public domain or has been previously disclosed to the Commission or to another regulatory body.

The Commission reserves the right to make such enquiries and seek further information from any persons named in the Forms, as it considers appropriate. It is important, therefore, to ensure that full names and addresses are provided where requested.

## **5. Data Protection**

Personal information provided in a Form will be used by the Commission. For the purposes of The Data Protection (Bailiwick of Guernsey) Law, 2001, the Commission is considered to be a data controller. The Commission will use the Forms to satisfy its statutory duty under the regulatory Laws. Information disclosed in the Forms may be disclosed to third parties for those purposes. Further information may be found in the Commission's Data Protection policy, which can be located on its website at [www.gfsc.gg](http://www.gfsc.gg).

## **6. Ongoing Notification Obligations – Form PD**

The assessment of an individual's fitness and propriety is a matter which the Commission considers on an ongoing basis. A Form PD must be completed whenever the information contained in an individual's Form PQ or Form PD previously submitted to the Commission is updated or changed in relation to their personal details, residence, employment, appointments and other business interests or the information under the heading, "Probity, Judgement, Diligence & Integrity". These Guidance Notes must also be referred to when completing a Form PD.

## **7. Forms – Specific Guidance – Manner of Completion**

The Commission reserves the right to return a Form that has not been completed in accordance with these Guidance Notes and to treat the notification requirement under the applicable regulatory Law as not having been satisfied.

All questions in a Form must be answered. If the Form is completed by hand, the Form must be filled out using pen and legibly written. The Commission reserves the right to return a Form if it is not legible and to treat the notification requirement under the applicable regulatory Law as not having been satisfied.

Any amendments made to a Form must be signed and dated by the individual who is the subject of the Form in order to confirm that the amendments made are correct.

If there is insufficient space on the Form, additional information must be written on a separate sheet and attached. Any attachments to the Form must be clearly referenced to the relevant question(s) in the Form, signed and dated by the individual who is the subject of the Form.

**The guidance which follows in these Guidance Notes is provided with reference to the numbering in the Form PQ.**

## **Cover Page**

### **Party to Contact Concerning The Form**

A party must be identified as the main point of contact regarding the Form. In most cases, any Commission requests for further information or clarification will only be directed to this party. This may be the individual who is the subject of the Form, a representative of the licensee or a nominated third party, such as a legal representative. This does not preclude the Commission from contacting the individual who is the subject of the Form directly to obtain information, if the Commission deems it appropriate to do so.

### **Reason for Submission and Proposed or Actual Date of Appointment**

The position to which the individual has been or is to be appointed must be identified. Where an individual has completed a Form at the request of the Commission, this must be indicated. The proposed or actual date of appointment must be given. Note that this does not preclude the requirement to notify the Commission of the date of the proposed<sup>4</sup> appointment and the date the appointment actually takes place.

### **Relevant Industry Sector**

To assist the Commission with the efficient review of a Form, the industry sector(s) to which the appointment relates must be identified. For example, if the individual has been appointed to the board of a collective investment scheme, the “Investment Business” box must be marked. All applicable boxes must be marked.

## **1. Personal Details**

### **Name(s)**

The individual’s name must be given in full, including all forenames and surnames.

The individual must also disclose any other names by which they have also been known, where these differ from their current full name (e.g. if the individual’s full name is John James and he is otherwise known as Johnnie Jules), this must be disclosed.

Where the individual’s name has changed, the details of all name changes that have occurred since the age of 16 must be disclosed. Both the individual’s forename(s) and surname(s) used must be disclosed. The reason for the change must also be explained (e.g. marriage, deed poll, divorce etc). If the actual date of the name change is not known, the estimated year and month must be provided.

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<sup>4</sup> Where, applicable – reference should be made to the requirements of the applicable regulatory Law.

## **Nationality and Dual Nationalities**

The individual's nationality and how it was acquired must be disclosed (e.g. through birth, naturalisation, marriage, etc). If the person is of dual nationality, both nationalities must be disclosed. If the individual's nationality has changed, all previous nationalities must be disclosed. If the actual date of the nationality change is not known, the estimated year and month must be provided.

## **2. Residence**

The individual's current private residential address, including postal code, must be disclosed. The period of residence must be identified by month and year. Where the individual currently occupies more than one residence, all addresses must be disclosed. The provision of a mailing address alone will not be considered a complete response to this section.

If the individual has changed private addresses at any time in the last 5 years, details of each address, including postal code, and the date of the change must be disclosed, together with the period of residence, identified by month and year.

Any gaps between residential addresses of a period of one month or more must be explained.

Any discrepancies between the country of private address and employment address must be explained (e.g. if the individual is a resident in the UK but their employer's address is in the US this must be explained).

## **3. Employment**

The individual must provide a full employment history for the 10 year period up to the date on which the Form is signed. This includes any periods of self-employment. The individual's proposed/current and past employers' addresses, including postal codes, must be disclosed. The period of employment must be identified by month and year. Where employment throughout any of the 10 year period has been with a single employer but different roles have been held, details regarding the title, date of appointment and responsibilities of those positions must be disclosed. Any gaps in employment of one month or more must be disclosed and explained.

The reason for leaving each employment must be given. Where the reasons for leaving are related to termination, dismissal or other issues which may be relevant to the person's fitness and propriety, these must be disclosed and explained. The individual must also disclose any periods of time where they have been asked not to attend the workplace (whether with or without individual's agreement)<sup>5</sup>.

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<sup>5</sup> This includes, for example, where an employee has been placed on a period of absence during their notice period ("gardening leave"), where an individual cannot recommence employment due to certain post-employment contractor restrictions ("non-compete agreements"), or where the individual is suspended from or asked to leave the workplace due to the undertaking of a workplace investigation.

## **Directorships held as Part of Employment**

The individual must disclose any directorships they hold or have held in relation to their employer's company, a subsidiary of the employer's company and/ or a company forming a part of a group of companies of which their employer's company forms a part. For example, if the individual acted or acts as a director of a nominee company wholly owned by their employer, the name of this company should be disclosed.

The individual must also disclose the name of any employer group or related companies or partnerships for which they have acted as a director, partner or a controller<sup>6</sup>. The Commission reserves the right to request a list of any entities for which the individual acted as a director, partner or a controller, in their previous employment.

The individual must also disclose the number of directorships held as part of their employment. For example, if an individual acts as a director for a collective investment scheme administered by their employer, this must be disclosed. The Commission reserves the right to request further information concerning these directorships.

If the individual's previous position title included the word "Director" but the duties of that position did not include those associated of a director as defined in these Guidance Notes, this need not be included in the number of directorships held as part of employment.

## **4. Appointments and Other Interests**

The information requested in this section relates to those appointments the individual holds or has held in relation to entities unrelated to their current or previous employment.

The individual must disclose any appointments or positions they hold or have held as a director, partner, controller, shareholder or company secretary within the last 10 years. The entities' names, the jurisdictions in which they were registered or established, their principal activities, the individual's position and the commencement and cessation date (as applicable) must also be disclosed.

Information disclosed in the Employment section should not be disclosed again in this section.

The Commission reserves the right to request further information concerning these appointments.

## **5. Competence**

### **a) Licences and Other Authorisations**

The individual must disclose all licences, registrations, authorisations or equivalent approvals (whether held personally or as a representative) that are or were held at any time in the previous 10 years, under the legislation of any other jurisdiction relating

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<sup>6</sup> For the purpose of this section Guidance Notes, the term "controller" means, an individual with a holding of at least 15% or more of the voting power in general meeting of the company or any other company which that company is a subsidiary.

to banking, investment, insurance, company and trust formation and administration, carrying out business as a director or relating to any other financial services business or prescribed business. The commencement and cessation dates (where applicable) must be disclosed.

**b) Professional Qualifications and Memberships**

The individual is required to list all past and present professional qualifications they have obtained relevant to the position in question. If the qualification is no longer attainable or the awarding body has changed, this must be identified, where known. Where known, the current equivalent qualification and / or awarding body must be identified in an attachment to the completed Form and referenced to this question. Membership numbers, where issued, must also be identified. The commencement and cessation date (where applicable), must be disclosed. Details concerning the nature of the qualification or membership must also be disclosed.

**c) Other Relevant Experience**

The individual must provide any additional information about their areas of expertise and experience that they believe makes them suitable for the role or position. For example, if the individual is being appointed based on their particular set of skills, or to add to the overall balance of experience on the Board, this must be explained. If the individual has no previous experience in the role or business to which they are to be appointed, the individual must explain why they are suitable for the position and any preparation or training they have undertaken in order to do so.

**6. Probity, Judgement, Diligence & Integrity**

The questions in this section seek historical information and have no time limit regarding the information requested, unless so specified in the question. In any case where the response to a question in this section is YES, full details must be given on a separate signed and dated sheet of paper and referenced to the appropriate question.

**a) Criminal Convictions**

If the answer to any of the questions in this section is YES, give particulars of the court judgement issued, the offence, the penalty imposed, and the date of conviction.

The Rehabilitation of Offenders Law provides the circumstances which, if present, will result in certain convictions being considered as spent and sets out a number of protections associated with spent convictions.

However, by virtue of the Rehabilitation of Offenders Ordinance, the Commission can require the following persons to disclose any Relevant Spent Convictions (defined below) in the course of its assessment of the fitness and propriety of any such person:

- (i) to hold any financial or related services permission meaning any licence, consent, authorisation, certificate, registration or other permission required to be obtained from the Commission by or under any enactment;

- (ii) to be granted any consent pursuant to the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959; or
- (iii) to hold or engage in any office, occupation, employment or work in relation to:
  - (I) any licence, consent, authorisation, certificate, registration or other permission required to be obtained from the Commission by or under any enactment;
  - (II) any consent pursuant to the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959;
  - (III) any office, occupation or work in the employment of, or undertaken on behalf of, the holder of a financial or related services permission; or
  - (IV) any office, occupation or work in the employment of, or undertaken on behalf of, an applicant for a financial or related services permission, as a chief executive, controller, partner, associate, director, company secretary, trustee, manager, compliance officer, corporate secretary or money laundering reporting officer.

It is recommended that independent legal advice is obtained if there is any doubt as to whether a conviction is considered to be spent or is an offence that must be disclosed in the Forms.

**b) Licence, Registrations, Authorisations, Professional Qualifications and Memberships**

If the answer to any of the questions in this section is YES, provide the name of the overseeing body, the dates on or about which the event took place and the particulars of the events giving rise to the action taken and the particulars of any decision or disciplinary action undertaken.

**c) Employment**

If the answer to the first question is YES, give particulars of the event in question and the period in which it took place (indicated by month and year).

If the answer to the second question is YES, provide the name of the regulator or professional body, the name of employer, the date(s) on or about which the event took place and the particulars of the events giving rise to the action taken.

**d) Litigation**

If the answer to any of these questions is YES, provide the name of the court in which the proceedings were commenced, the dates on or about which the event took place, the particulars of the event(s) giving rise to the action in question, and the particulars of any court order or judgement.

### e) Solvency

If the answer to any of these questions is YES, individuals are required to make full and frank disclosure of any proceedings relating to both their personal solvency and that of any corporate entities in which they had a controlling interest or acted as a director.

The disclosure must include details of all liquidations, whether voluntary or compulsory, bankruptcy, receivership, the dissolution of partnerships and limited partnerships, any enforced claim or sale by the court against cash or assets held and any administration orders. This would include any equivalent proceedings or orders howsoever categorised in any jurisdiction.

The Commission does not require disclosure where a company, such as an investment company or fund, is wound up on a pre-determined date or duration, or a partnership has been dissolved due to the retirement or death of a partner.

## 9. Declaration and Consent

The Declaration and Consent must be signed and dated by the individual, with the full name printed in block letters.

It should be noted that the existence of an adverse record does **not** mean that the individual will automatically be assessed as being unfit and improper. Each case will be assessed on its merits. It is therefore in the individual's interest to provide full and frank details on the Forms.

### a) Offence

Parties who sign a Form are reminded that it is an offence under the regulatory Laws to:

- (i) make a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
- (ii) dishonestly or otherwise, recklessly make a statement which is false, deceptive or misleading in a material particular;
- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or
- (iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly cause or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular.

It is also an offence under the regulatory Laws for a licensee to fail to provide to the Commission information in its possession knowing or having reasonable cause to believe that:

- (i) the information is relevant to the exercise by the Commission of its functions under the regulatory Laws in relation to the licensee; and

- (ii) the withholding of the information is likely to result in the Commission being misled as to any matter which is relevant to and of material significance to the exercise of those functions in relation to the licensee.

## **b) Information From Third Parties - Fitness & Propriety Verification**

The Form subject must consider carefully the consent requirements of the Form before signing.

The Forms are not exhaustive of the matters that the Commission may need to consider when assessing whether a person is fit and proper. The Commission may, therefore, request further information from third parties, including current and former employers, professional associations, regulatory bodies and judicial bodies, in order to verify the information disclosed on the Forms.

The Commission may seek to verify the information provided in a Form including answers relating to an individual's fitness and propriety.

## **DEFINITIONS**

The definitions in these Guidance Notes have been included for clarification purposes only. Where the definitions differ from those included within the regulatory Laws they are not intended to impose or imply separate or additional regulatory requirements. For regulatory definitions, please refer to the relevant regulatory Law.

For the purpose of these Guidance Notes, the terms:

**“Prescribed Position”** means director, controller, partner, manager, senior officer, significant shareholder, shareholder controller, indirect controller, general representative, beneficial owner of a financial services business, company secretary and such other positions as may be prescribed by regulations of the Commission.<sup>7</sup>

**“director”** means any person who occupies the position of director by whatever name called and, in relation to an unincorporated body, such as a partnership or branch office, any member of the committee or other similar governing body. Reference to “director” should be read as meaning senior management where the business is not a company.

**“manager”** means a person exercising managerial functions. For the avoidance of doubt, the term “manager” includes the positions of money laundering reporting officer, compliance officer and company secretary. Parties unclear as to whether the position in question would constitute a “manager” for the purpose of completing a Form PQ, should refer to the decision tree at the end of these Guidance Notes.

**“regulatory Laws”** means, collectively, The Banking Supervision (Bailiwick of Guernsey) Law, 1994, The Insurance (Bailiwick of Guernsey) Law, 2002, The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, The Protection of Investors

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<sup>7</sup> Under The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008, as amended and The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, individuals holding positions that would otherwise fall within this definition, are only required to submit Forms at the request of the Commission.

(Bailiwick of Guernsey) Law, 1987, The Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey), Law 2000 and The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008, all amended from time to time, and any other enactment or statutory instrument prescribed by the regulations of the Commission.

**“The Rehabilitation of Offenders Law”** means The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002, as amended.

**“The Rehabilitation of Offenders Ordinance”** means The Law and the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 (Commencement, Exclusions and Exceptions) Ordinance, 2006, as amended.

**“Relevant Spent Conviction”** refers to any conviction of offences involving fraud, dishonesty or terrorist financing, under any enactment (whether or not of the Bailiwick) relating to banking or other financial services, building societies, investment business, companies, insider dealing, market abuse or manipulation, consumer credit, consumer protection, credit unions, friendly societies, industrial and provident societies, insurance, trusts and trusteeships, the regulation of fiduciaries, insolvency or money laundering, perjury, or of attempting or conspiring to pervert the course of justice, and some offences concerning taxation. A full list of exemptions can be found in The Rehabilitation of Offenders Ordinance.

**Appendix A  
Manager Decision-Tree**

