

Guidance in Respect of Fast Track Application Process

LICENCE APPLICATIONS FOR ENTITIES ACTING IN RESPECT OF QUALIFYING INVESTOR FUNDS OR REGISTERED COLLECTIVE INVESTMENT SCHEMES

In recent years the Commission has introduced “fast track” application processes for Qualifying Investor Funds and Registered Collective Investment Schemes. Associated management entities requiring licences needed, however, to go through the Commission’s full assessment process. This document establishes a “fast track” application process for those associated management entities. Provided applicants meet the criteria set out below, the Commission will grant licences for such entities within 10 business days of receipt.

This document provides guidance in respect of applications for licences under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended by parties seeking to provide management services to Qualifying Investor Funds or Registered Collective Investment Schemes. The guidance covers the issues that need to be considered by Guernsey licensed service providers in respect of applications for such licences as well as the information that is required to be submitted to the Commission in support of an application.

For the avoidance of doubt, the regime covered by this document only covers licence applications for parties seeking to provide management services to Qualifying Investor Funds or Registered Part Collective Investment Schemes. Parties seeking to conduct activities such as administration or custody for such funds or who intend to conduct restricted activities in connection with other types of investment fund business and/or non-fund business will need to apply and be assessed under the Commission’s standard application process. Licences issued under this regime will be subject to regulatory fees under the relevant fee regulations.

Any questions in relation to this guidance, including those in respect of the Commission’s approach to relevant licensees of Qualifying Investor Funds and Registered Collective Investment Schemes falling within the scope of this document, and the responsibilities of Guernsey licensed service providers should be referred in the first instance to the Applications Team within the Investment Business Division of the Commission.

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BACKGROUND

Qualifying Investor Funds and Registered Closed-ended Investment Funds

The introduction of the Qualifying Investor Fund regime and the Registered Collective Investment Schemes regime provided fund promoters and their Guernsey regulated service providers with two fast track application processes for defined investment funds, giving a guaranteed response time from the Commission.

Since the introduction of the two regimes a significant number of fund applications have been made under them and at the same time associated licence applications under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended have been made for parties seeking to provide management services to the funds.

The Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended

The Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended (“the POI Law”) provides the current legal basis upon which the Commission has to consider applications for licences. Section 4(3) of that law states that:

In considering whether to grant an application made under section 3 the Commission shall have regard to the need to protect the public and the reputation of the Bailiwick as a financial centre; and to that end the Commission shall consider –

- the general nature and specific attributes of the controlled investment business to which the application relates; and
- whether or not the applicant is a fit and proper person to carry on that business; and
- the manner in which it is proposed to organise the carrying on of the controlled investment business to which the application relates, the number of persons who will be responsible for carrying on each aspect of that business and the relationship between those persons; and
- any other factors which the Commission thinks it appropriate to consider.

The Protection of Investors (Bailiwick of Guernsey) (Amendment) Law, 2007 (“the Amendment Law”) was approved by the States of Guernsey at its meeting in December 2007. Following this the framework for the Commission’s consideration of applications for licences under the POI Law will be amended as a result of the implementation of the Amendment Law. When enacted it will provide that “The Commission shall not grant an application for a licence unless satisfied that the criteria specified in Schedule 4 are fulfilled-

- (a) in relation to the applicant or licensee, and
- (b) in relation to any person who is or is to be a director, controller,

manager or partner of the applicant.”

GUIDANCE

The Commission’s Expectations

The information to be submitted in respect of an application for a licence to carry on controlled investment business is predominantly factual in nature. Information should be reflected, either in responses to the relevant sections of Form RA/1 or in attachments to that form. The purpose of the following guidance is to clarify the Commission’s expectations in respect of the due diligence work to be conducted by Guernsey licensees in support of a licence application under this regime. In the context of this regime, the term due diligence goes beyond a basic assessment of verification of identity or other checks undertaken in respect of Anti-money laundering or the countering of financing of terrorism. The Commission wishes to understand the assessment undertaken by the Guernsey licensee in determining the applicant’s overall fitness and properness and ability to meet the requirements of Schedule 4 to the POI Law

1. The beneficial owner or controller of the applicant should be an institution, or individuals, regulated and in good standing or, if conducting activities which do not require regulation, otherwise in good standing.

Details of the ultimate beneficial ownership of the applicant, including the full name of any individual or entity with any interest of 15% or greater, who should complete a Form PQ if not known to the Commission. It is also a requirement to provide details of the name and address of any individual or entity with an interest of 5% or more but less than 15%.

If the beneficial owner or controller is part of a group, a complete structure diagram showing ultimate beneficial ownership, any intermediate or holding companies and any other companies in the group. Where not already explicit, details should be provided of the principal activities of these companies and the jurisdiction(s) in which they are domiciled.

The Commission expects submitting licensees to have carried out work to ensure that Forms PQ submitted in support of a licence application have been completed in accordance with the requirements of that form and that all information is correctly and completely disclosed.

2. Good standing would imply that the institution itself, its directors, controllers and senior managers had not during the past 10 years been the subject of material disciplinary action by a regulator or professional body, or subject to any conviction for fraud, dishonesty or related offences of a financial nature.
3. The Guernsey licensed administrator associated with the application for

a licence under the POI Law must certify to the Commission that they have performed sufficient due diligence to be satisfied that the beneficial owner or controller and defined individuals are fit and proper and meet the requirements of Schedule 4 to the POI Law. In that regard, service providers should take account of the issues referred to within this Guidance Document and should document their findings and conclusions accordingly. Those documented findings and conclusions will form part of the application under this regime for a licence under the POI Law.

4. The Commission is prepared to consider applications on behalf of beneficial owners and controllers of applicants for a licence who themselves are newly formed parties (for example, companies or partnerships). The Guernsey licensed administrator who is acting on behalf of the licence applicant will need to consider the track record and experience of the individuals acting as controllers, directors and management of such entities taking into account their previous employment history, which should demonstrate that the individuals possess relevant experience in managing or advising on investors' funds using similar investment strategies to those to be adopted by the proposed licensee. The licensed service provider's consideration of these matters and conclusions arising should be documented. Those documented findings and conclusions will form part of the application under this regime for a licence under the POI Law.
5. Where applicants are aware of issues in relation to a beneficial owner or a controller of an applicant for a licence and/or defined individuals (including their controllers, directors and management) and associated parties, but are uncertain of their materiality or possible impact on the subject application, they should consult Commission staff at the time they become aware of the issue, and prior to submitting the formal application. A formal application should not be made until the issue has been resolved and the Commission's clearance has been provided in writing.
6. Commission staff will assess the proposed administrator's application due diligence as part of the formal licence application process in order to expedite the application. The POI Law requires the Commission formally to consider all licence applications and there is no provision within the POI Law to disapply any of the provisions. If the Commission finds that warranties provided were defective, or misleading, the Commission will consider taking action against the licensee and in appropriate cases would exclude that licensee from future participation in the self-certification programme.
7. The Commission expects each licensed administrator to ensure that its due diligence in respect of the applicant, its beneficial owners, controllers and associated parties is updated on a regular basis. The Commission will not prescribe the means by which this requirement is to be achieved but, as noted in 3 above, licensees should take account of the issues set out within this Guidance Document and should document

their findings and conclusions accordingly. Subsequent to any licence being issued under the POI Law, where the Guernsey licensed administrator becomes aware of issues in relation to the licensee (including their beneficial owners, controllers, directors and management) and associated parties, but are uncertain of their materiality or possible impact on the subject licensee, they should consult Commission staff.

8. Applicants (including their controllers, directors and senior managers) must meet the requirements of the Minimum Criteria for Licensing, which include, but are not restricted to, the requirement to be fit and proper, to have integrity and skill appropriate to the nature and scale of the licensee's activities and to conduct business in a prudent manner.

(a) Integrity

Beneficial owners, controllers and other relevant individuals (including their directors and management) should be of a high reputation and standing. Poor reputation would be considered to be a negative factor.

The beneficial owner or controller of an applicant for a licence must carry on their business with prudence, professional skill and honesty.

In the case of beneficial owners and controllers with a limited history, owing to the fact that they are newly or recently established, the integrity of the directors and management of such entities should be assessed in the light of previous employment and experience. It would be expected that the Guernsey licensed administrator would make direct contact with relevant individuals' previous employers as part of the necessary due diligence enquiries.

Beneficial owners and controllers must deal openly and honestly with the Commission and any other regulatory authority to whose regulation they are subject (either on a consolidated basis or directly).

(b) Solvency

Beneficial owners and controllers of applicants for a licence must be solvent. A firm regulated in another jurisdiction should also comply with the solvency, capital adequacy or financial resources requirement (as appropriate) laid down by the relevant regulatory body to which it is accountable. Past performance in this respect should also be considered to ensure that relevant requirements have been consistently met in the past.

Beneficial owners and controllers that are not regulated would be expected to maintain a surplus of shareholders' funds. Past performance in this respect should also be considered to ensure that relevant requirements have been consistently met in the past.

Beneficial owners and controllers would be expected to maintain adequate net liquid assets such that they are able to settle their debts when they fall due.

In the case of beneficial owners and controllers with a limited history, owing to the fact that they are newly or recently established (that is, not being able to produce audited annual financial statements for a period of at least 24 months), it will be necessary for the Guernsey licensed administrator to consider financial projections relating to the proposal under consideration. It will also be necessary to consider whether the controllers, directors and management of such promoters and/or investment managers have previously been responsible for the solvency of an entity (for example, if they held a director role or financial control function). Where individuals have been directors or held relevant positions at entities that have gone into liquidation or suffered financial loss it will be necessary to consider the role undertaken by the relevant individual in those situations.

(c) Competence

The most obvious way to demonstrate competence is to have established a favourable track record, in a business similar to that to be conducted in the Bailiwick.

The beneficial owners and controllers should be able to demonstrate an acceptable complaints history. In the case of parties with a limited history, due to the fact that they are newly or recently established, it will be necessary for Guernsey licensed administrators to consider whether the controllers, directors and management have been subject to significant complaints whilst employed by other firms.

Beneficial owners and controllers should have staff of adequate skill, knowledge and experience to undertake and fulfil their duties efficiently and effectively.

9. The Commission expects Guernsey licensed administrators to carry out due diligence to confirm that an application for a licence, including the information submitted in support of such application, is complete and accurate.

In this respect the Commission would expect at least the following to have been undertaken by the Guernsey licensed administrator:

- (a) checks to ensure that Form RA/1 and all supporting Forms PQ and PD are complete and have been signed by the appropriate individuals. For the avoidance of doubt this means that all sections of the forms have been completed as required and that where it is either required or appropriate that supporting information or

documentation has been submitted. Any gaps or omissions in the forms and other information/documentation should be identified and addressed prior to their submission to the Commission. Any apparent inconsistencies in the forms should also be addressed prior to their submission to the Commission.

- (b) checks to verify the accuracy of the information regarding regulatory status submitted in support of the licence application. In this respect the Commission would expect details of regulatory authorisations held with any regulatory authority to have been confirmed by the Guernsey licensed administrator with a public source, such as the relevant regulator's website or directly with the relevant authority.
- (c) checks to verify the accuracy of information disclosed on Forms PQ regarding employment history and professional qualifications. The Commission would expect the details disclosed on the Form PQ to be verified with independent sources, either directly with the firm(s) named on the form or via other reputable sources, such as regulatory agencies or publications. Professional qualifications should be verified in the same way or directly with the relevant professional body.
- (d) checks to support the assessment that the beneficial owners or controllers of an applicant for a licence have a demonstrable track record. In this case, the provision of information such as financial statements relating to investment funds managed or advised by the relevant parties or individuals and documents such as prospectuses, information memoranda or the equivalent are considered appropriate. The Commission is seeking information and documentation that demonstrates a positive track record over a period of at least 2 years in the type of investment business for which a licence is being sought. Depending upon the nature of individuals' previous experience and employment it may be necessary to obtain information from a number of sources.
- (e) checks to ensure that the beneficial owners or controllers are solvent. It is the Commission's expectation that the focus of such checks would be directed at corporate entities, or equivalent, although on occasions the solvency of key individuals may need to be considered. Audited financial information should be obtained to support ongoing solvency and where appropriate would be expected to cover a period of at least three years. It is recognised that certain jurisdictions do not require a statutory audit for certain types of entity, however regulated firms are normally expected to have their financial information externally audited. In addition management accounts would also be expected in respect of the current financial period. The absence of management accounts would be considered to be a deficiency in the overall control environment of the relevant entity and the implications of that lack would need to be considered

by the Guernsey licensed administrator.

- (f) checks to ensure that information obtained from external sources, for example regulatory authority websites, the internet or other published material is fully consistent with information disclosed in Form RA/1 and Forms PQ. Any apparent inconsistencies in the information should be addressed prior to the submission of the application to the Commission.

Any questions regarding the Commission's expectations in terms of the checks that are required should, in the first instance, be addressed to the Applications Team of the Commission's Investment Business Division

The Licence Application

1. In order to consider issuing a licence under the POI Law the Commission must receive a copy of the application form (Form FTL), which must be signed by the licensed administrator of the proposed licensee. The form contains the following requirements:

Warranties to the Commission from the proposed licensed administrator of the proposed licensee that they have:

- (a) performed sufficient due diligence to be satisfied that the beneficial owners or controllers of, and relevant parties to, the applicant for a licence are fit and proper and meet the requirements of Schedule 4 to the POI Law and that in this respect consideration has been given to all of the issues set out in the Guidance Document issued by the Commission dated XX 2008.
- (b) undertaken sufficient due diligence to confirm that the application for a licence under the POI Law which includes Form RA/1 and supporting documentation and information, is complete and accurate.

The Commission attaches great importance to these warranties and the standard of documentation and information submitted in support of the licence application, as referred to below. As is made clear in this Guidance Document the Commission has a statutory duty in considering applications for licences under the POI Law and the submission of complete and accurate submissions, together with the relevant warranties will be used by the Commission in expediting the formal application process.

- (c) a fully completed signed Form RA/1 together with fully completed signed Forms PQ (or Forms PD as appropriate) for all relevant controllers, directors and managers;
- (d) all associated documentation and information required by the Form RA/1 (including for example, administration agreement in at least final draft stage, the financial projections and information, confirmation of

the auditors' acceptance to act). This list is indicative only; the specific requirements will depend on the nature of each application;

- (e) confirmation that the applicant has been incorporated or established (as appropriate);
 - (f) documentary evidence supporting the applicant's paid up share capital, together with the relevant directors' confirmation in respect of the applicant's financial resources provisions (as required under the relevant section of The Licensees (Capital Adequacy) Rules 2010)
 - (g) a copy of the licensed administrator's due diligence supporting the warranties provided above. This information would enable the Commission to focus its due diligence enquiries and consider the validity of the warranties provided. This documentation will not be returned to the Administrator unless specifically requested;
 - (h) payment of the application fee under the relevant fee regulations.
2. The Commission will formally consider the application for a licence within 10 business days of receipt of the above. In practice this means that a licence assessment committee will be convened within 10 business days of receipt of all of the above information, documentation and warranties to consider the issue of a licence. Any issues resulting from the Commission's initial assessment of the application will be referred back to the Guernsey licensed administrator acting on behalf of the applicant within the 10 business day period.