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Form Discretionary Exemption 2016

THE REGULATION OF FIDUCIARIES, ADMINISTRATION BUSINESSES, AND COMPANY DIRECTORS, ETC. (BAILIWICK OF GUERNSEY) LAW, 2000 (“the Law”)

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| APPLICATION IN RESPECT OF A DISCRETIONARY EXEMPTION |
| ***NOTES ON COMPLETION OF FORM DISCRETIONARY EXEMPTION 2016***   1. Any person or entity wishing to carry out regulated activities as defined under section 2 of the Law must be licenced under the Law. Regulated activities include:    1. the formation, management or administration of trusts and the provision of advice in relation to the same:    2. company or corporate administration including, without limitation, the formation, management or administration of companies, partnerships or other unincorporated bodies and the provision of advice in relation to the formation, management or administration of companies, partnerships or other unincorporated bodies, whether incorporated or established in or under the laws of the Bailiwick or elsewhere;    3. the provision of executorship services including (without limitation) acting as, or accepting an appointment made by will as, an executor of a will or administrator of an estate; and    4. the formation, management or administration of foundations, and the provision of advice in relation to the formation, management or administration of foundations.   However where an activity is exempted under section 3 of the Law it is not a regulated activity.   1. Section 3(1)(y) allows the Commission, on application by a person, to specifically exempt an activity, transaction or appointment from the operation of section 2 by written instrument. 2. All questions on this Form Discretionary Exemption 2016 should be completed and any forms received unsigned will be returned. Forms received incomplete may also be returned for completion. State “not applicable” where a question does not apply; an explanation of this answer should be provided if it is not immediately obvious from information given elsewhere on this form. 3. Where the answer to a question is unknown, or provisional, or is modified at a later stage in the application process, the applicant should recognise that this may cause delay to the consideration of the application. 4. If there is insufficient space on the form, please append additional sheets and initial each sheet. 5. Please type the information in each box, or onto additional sheets where necessary. 6. Please send the completed form and prescribed fee (see the Financial Services Commission (Fees) Regulations, available on the Commission’s website) to:  |  |  | | --- | --- | | Authorisations Telephone: (01481) 712706  Guernsey Financial Services Commission International dialling code: 44 1481  Glategny Court Internet: http://www.gfsc.gg  Glategny Esplanade  St Peter Port  Guernsey GY1 3HQ  Channel Islands  Supporting documents may either be submitted in electronic format to [authorisations@gfsc.gg](mailto:authorisations@gfsc.gg) or, alternatively, by USB/disk.  **Please see guidance notes at the back of the form.** |  | |

1. Details of the Applicant:

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| Name: |
| Address: |
| Directors/controllers: *(where this is the name of a trust, company, partnership or other type of vehicle this must include the identity of underlying principals such as settlor, beneficiaries or investors as appropriate. Jurisdictions of registration of companies should be provided and full names and dates of birth of individuals):* |

1. Explain the rationale behind the request for an exemption, which should include a summary of the business plan, particular activity, transaction or appointment for which the exemption is sought:

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1. Indicate why the Applicant’s activity is considered to be by way of business as defined in Section 58 of the Law *(an exemption is not required if the applicant is not acting by way of business):*

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1. Details of the party for whom or in relation to whom the Applicant will be acting:

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| Name: |
| Address: |
| Directors/controllers: *(where this is the name of a trust, company, partnership or other type of vehicle this must include the identity of underlying principals such as settlor, beneficiaries or investors as appropriate. Jurisdictions of registration of companies should be provided and full names and dates of birth of individuals):* |

1. Indicate the objectives of the partnership/structure and the nature of any underlying activity or assets held with any trust, company, partnership or other type of vehicle the Applicant will be appointed to:

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1. If applicable, summarise why the Applicant does not require registration or authorisation under any of the regulatory laws*:*

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1. Confirm the identity of the proposed administrator *(a Bailiwick licenced financial services business to whose AML/CFT controls the Applicant’s business will be subject):*

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| --- | --- |
| Name |  |
| Address |  |

1. Any further information in support of this application:

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**DOCUMENTATION SUBMITTED**

In support of the application the following documentation/information must be enclosed with this form:

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| * A structure chart showing all the entities connected with the Applicant. |  |
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| * The fee as prescribed from time to time by Regulations made under Section 22 of the Law *(Please see the Commission’s website for the current fees for company/partnership exemptions and individual exemptions)* |  |
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| * If the Applicant has already been incorporated or otherwise established, evidence of this should be provided.   *(If the Applicant has not been incorporated or otherwise established the Commission will only issue consent in principle)* |  |
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| |  |  |  |  | | --- | --- | --- | --- | | Signed |  | Date |  | |  |  |  |  | | Name |  | | | |  |  | | | | Position |  | | | |  |  |  |  | | Institution |  | | | |  |  |  |  | | Address |  | | | |  |  |  |  | | Tel No |  | | | |  |  | | Email address |  | | | |  |

**THE DATA PROTECTION (BAILIWICK OF GUERNSEY) LAW, 2001**

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.

**GENERAL GUIDANCE INFORMATION**

These notes are for guidance only and are not a substitute for the regulatory Laws or rules and guidance made thereunder and reference should be made to them before completing the Form.

1. There are criteria under the Law upon which the Commission is required to have regard to in determining whether to grant an exemption under section 3(1)(y) of the Law. Accordingly, the Commission has a wide discretion as to whether it grants such an exemption or not. This will generally be based upon a number of factors including, but not limited to, the particular activity, transaction or appointment which the exemption is being sought in relation to and the number of applications for exemptions which the person applying has previously made.
2. Under the Law the Commission may grant or refuse the application subject to such conditions as the Commission may consider necessary or expedient. Where the Commission grants an application it will be subject to a condition requiring that the applicant’s business be undertaken in accordance with the AML/CFT framework of its licensed administrator. This condition is applied as a matter of policy on all exemptions granted under section 3(1)(y) of the Law. A further condition which the grant of the application is subject to requires that the exempted entity apply for a variation to the exemption should it propose changing its administrator. Should an applicant have no licensed administrator it must satisfy the Commission that there will be sufficient controls in place to comply with the Proceeds of Crime Regulations and Rules in the Handbook for Financial Services Businesses.
3. An exemption application in respect of carrying out the activities of a Private Trust Company (“PTC”) must include the identity of its directors. As a matter of general policy, the Commission will apply a standard condition on the exempted party requiring it to appoint at least one representative from the licensed fiduciary to the board of the exempted party. This representative as a professional fiduciary practitioner can provide valuable experience and expertise on trust matters for the rest of the board as well as providing the administering licensed fiduciary with a degree of influence over the PTC’s activities.