

Guernsey Financial Services Commission

Consultation Paper on Proposals for Non-Guernsey Schemes

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Responses to this Consultation Paper are sought by 27 January 2021.

We welcome and encourage respondents to provide feedback or comment on any section and question. Feedback may be provided via the Consultation Hub section of the Guernsey Financial Services Commission's (the "Commission") website (www.gfsc.gg).

Introduction

Purpose of the Consultation Paper

The Commission seeks to regulate and supervise financial services in the Bailiwick of Guernsey, with integrity, proportionality and professional excellence, and in so doing help to uphold the international reputation of the Bailiwick of Guernsey as a finance centre.

Consistent with the Commission’s objectives, the proposals in this Consultation Paper are designed to ensure that the rules framework under The Protection of Investors (Bailiwick of Guernsey) Law, 1987 (“PoI”) remains fit for purpose; introduces efficiencies in the current framework and seeks to clarify current areas of uncertainty and duplication. These changes will ensure that investors and the reputation of the Bailiwick continue to be protected while also helping to create opportunities for further growth.

The purpose of this Consultation Paper is to seek feedback from all interested parties on detailed proposals for changes to the Commission’s Non-Guernsey Scheme regime.

The publication of this Consultation Paper follows the Commission’s review and consideration of feedback received on the Funds Growth Discussion Paper issued in July 2020¹. A high level summary of this feedback is provided in Part 1 of this paper and additional discussion on specific elements is provided in Part 2.

This Consultation Paper is a working document and does not prejudice any final decision to be made by the Commission.

Background to the proposals

A Non-Guernsey Scheme is a collective investment scheme² that is not established or incorporated in the Bailiwick of Guernsey and is not authorised or registered by the Commission. The Law permits PoI licensees to act for Non-Guernsey Schemes if they are authorised in Jersey, Isle of Man, United Kingdom or Ireland without prior approval³. Licensees acting for Non-Guernsey Schemes established in any other territory are subject to the requirements of the Licensees (Conduct of Business and Notification)(Non-Guernsey Schemes) Rules 1994 (“the Non-Guernsey Scheme Rules”). For the purposes of this consultation we refer to schemes within scope of notification under the Non-Guernsey Scheme Rules as “Relevant Schemes”.

The Non-Guernsey Scheme Rules are currently only applied in practice to restricted activities carried out in connection with open-ended schemes.

¹ Discussion Paper – Funds Growth Omnibus, 7 July 2020

² As defined in Schedule 1 of the PoI Law

³ Non-Guernsey Schemes that are exempt by virtue of establishment in a Designated Country or Territory as prescribed in the Investor Protection (Designated Countries and Territories) Regulations 1989 and 1992

As at the date of writing 66 approvals have been issued to PoI licensees acting for Relevant Schemes with a total net asset value of £37 billion. By way of comparison, the total net asset value of Guernsey domiciled open ended funds is £48 billion.

In its July Discussion Paper the Commission proposed that the Non-Guernsey Scheme Rules be amended to remove the requirement for prior Commission approval in respect of the commencement of restricted activities in respect of a Relevant Scheme. The requirement to provide notification under the Non-Guernsey Scheme Rules was proposed to be retained and the Non-Guernsey Scheme Rules amended to remove any duplication with the Licensees (Conduct of Business) Rules 2016 (“the CoB Rules”).

We considered the responses to the Discussion Paper carefully and with an open mind. Responses were supportive of the proposals but also included suggestions for further reform including that the Non-Guernsey Scheme Rules be removed in their entirety. We also undertook further analysis of the risks posed by the regime. Based on this due consideration and analysis this paper sets out further proposals to remove both the approval and notification requirements, along with associated fees, and to replace them with an annual data submission.

Next Steps

The closing date for the Consultation Paper is 27 January 2021. Responses to this Consultation Paper will be considered by the Commission with a view to revoking the Non-Guernsey Scheme Rules and introducing amended data collection requirements in 2021.

Part 1 – Feedback to the Discussion Paper

The Funds Growth Discussion Paper included high-level proposals to revise the regulatory framework for PoI licensees acting for Relevant Schemes.

Responses were received to the Discussion Paper from trade associations, the public and a cross-section of industry. Of the seventeen respondents, twelve agreed with the proposal to amend the Non-Guernsey Scheme Rules to remove the requirement for prior approval in respect of the commencement of restricted activities in respect of a Relevant Scheme and the remaining five had no view on the proposal (the focus of these responses was on other elements of the Discussion Paper). Two of the responses received also indicated that the Commission should consider more far reaching reform including removing the Non-Guernsey Scheme Rules altogether. Given the support for significant revision of the regime this paper sets out proposed changes for further consideration.

The Discussion Paper made a number of different proposals in addition to those relating to the Non-Guernsey Scheme Rules. Each of these proposals will be addressed in separate consultations, based on appropriate timetables⁴.

The Commission would like to thank everyone who responded to the Discussion Paper.

Financial Crime

The proposals in this paper and any potential outcomes do not impact on a PoI licensee's obligations under Schedule 3 to the Criminal Justice (Proceeds of Crime) Law or the Handbook on Countering Financial Crime and Terrorist Financing to apply the relevant provisions in Schedule 3 and the rules in the Handbook to business relationships the PoI licensee has with open ended and closed ended Non-Guernsey Schemes. No changes are envisaged to section 7.12.3 of the Handbook which contains rules and guidance on how those provisions apply to these relationships.

⁴ A Consultation Paper on Proposals for Private Investment Funds is to be published in December 2020.

Part 2 – The Proposed Changes

This part of the paper highlights key amendments to the framework which may be worthy of consideration but comments are welcomed in respect of any elements of the proposals.

Proposals

Currently the Non-Guernsey Scheme Rules require PoI licensees intending to carry out one of the restricted activities of management, administration or custody in connection with a Relevant Scheme to give prior written notice to the Commission and receive approval before commencing those restricted activities. Approval must be sought in respect of each individual Relevant Scheme.

It is proposed that the Non-Guernsey Scheme Rules be revoked in their entirety. In order that the Commission remains fully cognisant of the type of PoI business undertaken by regulated firms and the risks they pose to the Commission’s core functions it is proposed that the annual return for PoI licensees be extended to include information on activities undertaken in respect of investment assets serviced in Guernsey.

It should be noted that irrespective of any revocation of the Non-Guernsey Scheme Rules, any entity undertaking a restricted activity in or from within the Bailiwick in connection with a collective investment scheme (wherever domiciled) will continue to be required to be licensed under the PoI Law.

Fees

Under The Financial Services Commission (Fees) Regulations, 2017 (the “Fee Regulations”). A PoI licensee making a notification under Rule 2.01 of the Non-Guernsey Scheme Rules is required to pay a fee of £1,108 under the Fee Regulations. A PoI licensee acting for an approved non-Guernsey scheme must pay an annual fee of £553 per approval as at 1 January each year. It is proposed that with the revocation of the Non-Guernsey Scheme Rules both the notification and the annual fee will not be transitioned and therefore will fall away.

Scope & Practical application

The provisions of the PoI Law relevant to the framing of the Non-Guernsey Schemes regime⁵ make no distinction between closed ended and open ended overseas collective investment schemes. The current Non-Guernsey Scheme Rules are not explicit on the scope of the Rules but historically have only been applied to open ended schemes in practice.

⁵Section 7, Section 29(2) and Note D of Schedule 2 of the PoI Law

In order to simplify the requirements, and to ensure the Commission has an accurate and complete picture of assets serviced by PoI licensees, it is proposed that the licensee's Annual Accounts and Annual Return online portal form be amended to request the following data from all PoI licensees. The data will be requested in respect of restricted activities carried out in respect of any open or closed ended overseas collective investment scheme not authorised or registered under the PoI Law.

- Total number of Non-Guernsey Schemes
- Total assets under management
- NAV for each fund
- Asset type of each fund
- Investor type of each fund

It is proposed that details of the amended annual return will be published prior to implementation.

Q1: Do you have any comments on the proposed revocation of the Non-Guernsey Scheme Rules?

Q2: Do you have any views on the inclusion of additional data requests in the licensee's annual return?

Q3: Please provide any further comments you may wish to share with respect to the proposals as set out in this consultation paper.