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Guernsey Financial
Services Commission

Private Investment Fund Guidance

Guidance Note – November 2021

The purpose of this document is to provide guidance in respect of relevant issues relating to Schemes registered under the Private Investment Fund Rules 2021 (the “Rules”); due diligence issues that should be considered by Guernsey licensed service providers to such schemes and the disclosure statement required to be provided to Qualifying Private Investors in a scheme registering under Route 2 as described in Schedule 1 to the Rules.



Contents

New Promoter Due Diligence	3
Disclosure Statement	5
Responsibility for Investor Due Diligence.....	6

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New Promoter Due Diligence

As part of the application process for registration of a new Private Investment Fund (“PIF”) the fund’s Designated Administrator is required to provide a declaration as to the fitness and propriety of the fund promoter. The following guidance sets out a number of considerations which the Commission would expect the Designated Administrator to take into account as part of its due diligence process.

1. The promoter and/or investment manager should be a skilled investment person or an institution regulated and in good standing, or, if conducting activities which do not require regulation, otherwise in good standing.
2. Good standing would imply that the promoter and/or investment manager itself, its directors, controllers and senior managers had not during the past 5 years been the subject of material ongoing 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 Designated Administrator must certify to the Commission that it has performed sufficient due diligence to be satisfied that the promoter and/or investment manager are fit and proper. In that regard, such service providers should take account of the issues referred to at 8(a), (b) and (c) below and should document their findings and conclusions accordingly. When assessing the fitness and propriety of a promoter and/or investment manager the Designated Administrator should also be cognisant of its obligations to risk assess its relationship with the promoter and the investment adviser (if different entities) and undertake customer due diligence in accordance with the relevant provisions in Schedule 3 to the Criminal Justice (Proceeds of Crime) Law (the “Proceeds of Crime Law”) and relevant chapters of the Handbook as determined by its risk assessment.
4. For the avoidance of doubt, applications on behalf of newly formed promoters and/or investment managers will be considered. The Guernsey licensed service provider who is seeking the scheme’s registration will need to consider the track record and experience of the controllers, directors and management of such entities taking into account their previous employment history. Such previous employment history should demonstrate that the individuals possess relevant experience in relation to managing or advising on investors’ funds using similar investment strategies to those that will be adopted by the Private Investment Fund. The licensed service provider’s consideration of these matters and conclusions arising should be documented.
5. Where applicants are aware of issues in relation to a promoter and/or investment manager (which term should be taken to include their controllers, directors and management) and associated parties, but are uncertain of their materiality or possible impact on the subject application, they should consult the Commission prior to submitting the formal application at the time they become aware of the issue.
6. The Commission will assess licensees’ application due diligence as part of their post-facto monitoring of licensees. If the Commission were to find that declarations provided were defective, or misleading, the Commission could take action against the licensee and in appropriate cases could exclude that licensee from future participation in the fast track regime.

7. The Commission expects each licensee to ensure that its due diligence in respect of the promoter and/or investment manager 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 set out in 3 above licensees should take account of the issues at 8(a), (b) and (c) below and should document their findings and conclusions. Where licensees become aware of issues in relation to a promoter and/or investment manager (which term should be taken to include their controllers, directors and management) and associated parties, but are uncertain of their materiality or possible impact on the subject Private Investment Fund, they should consult the Commission at the time they become aware of the issue.
8. Promoters and/or investment managers (including their directors, controllers and senior managers) must be fit and proper. This can be defined as being a requirement for integrity (or honesty), competence and solvency. Guernsey licensed service providers should ensure that the following issues are covered as part of their due diligence procedures in respect of new client relationships and that their findings and conclusions are documented.

- a. Integrity

Promoters and/or investment managers (which term should be taken to include their controllers, directors and management) should be of a good reputation and standing. Poor reputation would be considered to be a negative factor. The promoter and/or investment manager must carry on their business with prudence, professional skill and honesty. In the case of promoters and/or investment managers with a limited history, due to the fact that they are newly or recently established, the integrity of the controllers, directors and management should be assessed in the light of previous employment and experience.

- b. Solvency

Promoters and/or investment managers should 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.

- 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 promoter and/or investment manager should be able to demonstrate an acceptable complaints history. In the case of promoters and/or investment managers with a limited history, due to the fact that they are newly or recently established, Guernsey licensed service providers may wish to consider whether the controllers, directors and management of such entities have been subject to significant complaints whilst employed by other firms. Promoters and/or investment managers should have staff of adequate skills,

knowledge and experience to undertake and fulfil their duties efficiently and effectively.

Disclosure Statement

Scope of application

This guidance applies to the disclosure statement required to be provided to Qualifying Private Investors in a Private Investment Fund registering under Route 2 as described in Schedule 1 to the Rules.

General guidance

The disclosure statement should state all material information (including risk disclosures) that an investor would reasonably require to enable such investor to make an informed judgement about the merits and risks of investing in the PIF.

Specific statements

The disclosure statement should include the following statements (or words of equivalent effect):-

“The scheme is a registered closed-[open-] ended investment scheme registered pursuant to the Protection of Investors (Bailiwick of Guernsey) Law, 2020 and the Private Investment Fund Rules 2021 issued by the Guernsey Financial Services Commission (the “Commission”). The Commission, in granting registration, has relied upon specific warranties provided by [X], the Company’s Designated Administrator.”

“The Commission takes no responsibility for the financial soundness of the [Scheme] or for the correctness of any of the statements made or opinions expressed with regard to it.”

“The scheme has been established in Guernsey as a Private Investment Fund. It is only suitable for those who fall within the definition of a Qualifying Private Investor as defined in the Private Investment Fund Rules 2021. Regulatory requirements which might provide a higher degree of protection appropriate for retail investors are not applied to this scheme. This scheme is not suitable for retail investors.”

Acknowledgement of receipt of the disclosure statement

The Designated Administrator should receive written acknowledgment from prospective PIF investors that they have received and understood the disclosure statement.

Responsibility for Investor Due Diligence

It should be noted that a PIF is required (under section 4.8 of the Handbook) to nominate a firm, licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 and contracted to, or connected with, the PIF, to be responsible for meeting the investor customer due diligence requirements of Schedule 3 to the Proceeds of Crime Law and the Handbook.

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