

Change of Designated Person Guidance

November 2021

BACKGROUND

For each class of Guernsey regulated collective investment scheme, when the Commission issues its declaration of authorisation/registration under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (“the POI Law”) it will, at the same time, confirm the name of the party which is designated as the Designated Administrator of the scheme. Likewise, in the case of authorised or registered open-ended schemes, the Commission will also confirm the name of the party which is designated as the Designated Custodian/Trustee of the scheme. There should be no change of Designated Administrator and/or Designated Custodian/Trustee unless or until the Commission has formally confirmed the designation of the new Designated Administrator and/or Designated Custodian/Trustee as such.

EXPECTATIONS

The Rules applicable to each of the various types of authorised/registered collective investment schemes under the POI Law detail which party should notify the Commission of a proposed change of Designated Administrator or Designated Custodian/Trustee (together, “Designated Persons”). Whilst the Commission is content for a third party, such as a law firm, to make the application, the relevant formal notification(s) required under the rules must be included.

In order for the Commission to be able to consider a request to confirm the designation of the proposed new Designated Person(s), the following information / documentation should be supplied: -

1. The date when the change of Designated Person is due to become effective;
2. The reasons behind the proposed change of Designated Person;
3. In respect of authorised/registered open-ended collective investment schemes, revised Scheme Particulars or Addendum to the Scheme Particulars to reflect the change of Designated Person. Please note that this is not necessarily required in respect of closed-ended investment schemes, unless additional monies are to be raised by way of some form of new placement, or similar;
4. Novation Agreement (or equivalent documentation);
5. Details of how and when investors will be notified of the change of Designated Person. If required by the scheme’s constitutive documents, investor approval to the proposed change(s) may be needed;
6. Should the proposed Designated Administrator or Designated Custodian/Trustee not be acting as an existing Designated Person of an authorised or registered collective investment scheme, then contact should be made with the Commission prior to the

application being made to ascertain what additional information/documentation the Commission may require to confirm the designation of the proposed new Designated Person(s);

7. In respect of registered closed-ended/open-ended collective investment schemes and authorised qualifying investor funds, the proposed Designated Administrator will need to provide the following warranties, which are detailed in the Guidance Notes on Qualifying Investor Funds and Registered Collective Investment Schemes, in a signed letter. The warranties are summarised below for your convenience. In the case of a Private Investment Fund (“PIF”) the proposed new Designated Administrator should contact the Commission at an early stage to determine what warranties should be provided (as this will be dependent upon the Route under which the PIF registration was issued). Likewise, where there is a proposed change of Designated Administrator for a scheme which has been classified as a Guernsey Green Fund, contact should be made with the Commission at an early stage to discuss the relevant additional requirements, on a case by case basis: -

Qualifying Investor Funds

- I confirm that the fund is a Qualifying Investor Fund, as defined in the Qualifying Investor Fund Guidance Note issued by the Commission dated November 2021.
- I confirm that we, as proposed Designated Administrator of the fund, have performed sufficient due diligence to be satisfied that the promoter of, and the associated parties to, the fund are fit and proper and that in this respect consideration has been given to all of the issues set out in the Qualifying Investor Fund Guidance Note issued by the Commission dated November 2021.
- I confirm that we, the proposed Designated Administrator of the fund, have effective procedures in place to ensure restriction of the fund to professional, experienced and knowledgeable employee investors.
- I confirm that we, the proposed Designated Administrator of the fund, are content that the economic rationale for the fund and any attendant risks are clearly disclosed in the fund’s scheme particulars/prospectus/offer document or equivalent.
- I confirm that the information supplied is complete and correct to the best of my knowledge and belief at the time of submission and that there are no other facts material to the application of which the Commission should be aware.
- I am aware it is an offence, under the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 in respect of which the Commission exercises its functions, to knowingly or recklessly provide the Commission with information which is false or misleading in a material manner.

Registered Collective Investment Schemes

- I confirm that we, as proposed Designated Administrator of the scheme, have performed sufficient due diligence to be satisfied that the promoter of, and the associated parties to, the scheme are fit and proper and that in this respect consideration has been given to all of the issues set out in the Guidance Note on Registered Collective Investment Schemes issued by the Commission.
- I confirm that we, the proposed Designated Administrator of the scheme, are content that the disclosures in the scheme's prospectus/offer document or equivalent meet the requirements of the Prospectus Rules 2021 and that the following disclosures are made in the scheme's prospectus/offer document or equivalent:

“The Company is a Registered Closed-[Open-] ended investment scheme registered pursuant to the Protection of Investors (Bailiwick of Guernsey) Law, 2020 and the Registered Collective Investment Scheme Rules 2021 issued by the Guernsey Financial Services Commission (the “Commission”). The Commission, in granting registration, has not reviewed this document but has relied upon specific warranties provided by [], 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.”

- I confirm that the information supplied is complete and correct to the best of my knowledge and belief at the time of submission and that there are no other facts material to the application of which the Commission should be aware.
- I am aware it is an offence under the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020, in respect of which the Commission exercises its functions, to knowingly or recklessly provide the Commission with information, which is false or misleading in a material manner.

Timing

It is the Commission's intention to review the request for the designation of a new Designated Person and issue a response within ten business days of receipt. The ten business day period is indicative and, although every effort will be made to adhere to it, the Commission cannot in any way be bound by it. Please note that the response will not necessarily be the formal designation of the new Designated Person, but may be a request for further information/documentation.

Please note that until the Commission confirms the designation of the new Designated Administrator and/or Designated Custodian/Trustee as such, the current Designated Person remains formally responsible as the Designated Administrator/Custodian/Trustee of the collective investment scheme and the new Designated Person should not act (or hold itself out as acting) in that capacity.