



Guernsey Financial  
Services Commission

# **Guidance on Private Trust Companies**

**November 2021**

**Regulation of Fiduciaries, Administration Businesses and  
Company Directors, etc. (Bailiwick of Guernsey) Law, 2020**

# Private Trust Companies

## 1. Introduction

This note provides guidance on the regulatory requirements for Private Trust Companies (“PTCs”) and sets out the Guernsey Financial Services Commission’s (the “Commission”) expectations of licensed fiduciaries which administer PTCs.

A PTC is a company that acts as a trustee to a specific trust or a group of connected trusts, often for one family.

## 2. Regulatory Requirements for PTCs

Acting as trustee is a regulated activity under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 (“the Fiduciaries Law”). If a PTC acts as a trustee, by way of business, in or from within the Bailiwick or if a Bailiwick company acts as a trustee, by way of business, in or from within any place whatsoever, it must either apply for an exemption or a licence under the Fiduciaries Law.

The term “by way of business” is further explained below but it is noted that a PTC which does not conduct activities by way of business falls outside the scope of the Fiduciaries Law.

Reference may be made to the Application Decision Tree in the Appendix.

### “By Way of Business”

Under the Fiduciaries Law a person who carries on an activity shall be deemed to do so by way of business if he receives any income, fee, emolument or other consideration in money or money's worth for doing so. For the avoidance of doubt, a PTC is acting by way of business even if it is merely acting as a conduit and paying fees onto a third party. A PTC which does not act by way of business is not required to apply for exemption or licensing under the Fiduciaries Law.

### Exemption from licensing

However, under section 3(1)(ac) of the Fiduciaries Law, it is possible for a PTC that is operating by way of business to seek a discretionary exemption from licensing. The Commission recognises that it may be potentially disproportionate to require a fiduciary licence for essentially one business relationship. Therefore the Commission may, where it thinks appropriate, having given consideration to the specific circumstances, and on application, exempt a PTC from the requirement to obtain a licence, provided that certain criteria are met.

### *Criteria and consideration*

A PTC may apply for a discretionary exemption where each of the following criteria are fulfilled:

- The PTC will only act as a trustee to a specific trust or a group of connected trusts with common interest, such as those trusts are for one family.
- The PTC will not advertise or market its services to the public in any way.

- The Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 (the “Enforcement Powers Law”) stipulates that no person other than a licensed fiduciary shall use any name which indicates or may reasonably be understood to indicate that such person is a licensed fiduciary. However, the Enforcement Powers Law provides that a PTC may apply to the Commission for a permission to use certain names, including “trust” or “trustee”. The PTC can apply for such permission at the same time as making the application for a discretionary exemption. For the avoidance of doubt, the term “PTC” may be used without having to obtain a permission.
- The PTC will be administered by a company licensed under the Fiduciaries Law.
- The licensed fiduciary which will administer the PTC confirms to the Commission that it will retain sufficient knowledge and information about the PTC’s ownership and control structure and about its activities to be satisfied that:
  - a) the PTC is effectively administered and governed; and
  - b) the PTC complies with relevant laws and regulatory requirements.

This may be achieved for example, by any of or a combination of: provision of a director on the board of the PTC, provision of a company secretary, provision of authorised signatory, and close monitoring and oversight of the PTC.

The granting of a discretionary exemption will depend on the facts and circumstances of each individual case. For example, the Commission will also need to be satisfied that it has no concerns in respect of the individuals, parties or activities associated with the PTC.

As a matter of general policy, the Commission will apply a standard condition on the exempted PTC requiring it to be administered within the AML/CFT controls of the licensed fiduciary which administers it.

An application for a discretionary exemption should be submitted for the attention of the Authorisations Division using the application form [here](#) and should be accompanied by the applicable fee (or fees if a request to use name is also being made) which can be found using the following link [here](#).

#### Application for a Fiduciary licence

There may be cases where a PTC may prefer to seek a fiduciary licence. This may be because a PTC considers that it has sufficient expertise as well as an appropriate AML/CFT framework in place not to require an existing fiduciary licensee to assist it in administering its business.

Holding a fiduciary licence may provide comfort to the beneficiary family group and third parties such as bankers or insurance companies as the PTC is subject to the supervision of the Commission. However, as a fiduciary licensee is normally permitted to undertake a full range of regulated activities, it may be appropriate for a PTC’s licence to be issued subject to conditions that limit the activities that may be carried on.

For further information on the criteria, procedures and fees required to apply for a fiduciary licence please refer to the following Commission website pages.

<https://www.gfsc.gg/authorisations/fiduciary-applications/full-fiduciary-licence-corporate>  
[https://www.gfsc.gg/industry-sectors/fiduciary/fees.](https://www.gfsc.gg/industry-sectors/fiduciary/fees)

### Private Trust Foundation (“PTF”)

The Commission is open to consider applications for a discretionary exemption for a PTF. In considering granting an exemption to a PTF, the Commission will look into applying similar criteria as for the case of PTCs. The same application form (see link above) can be used.

### **3. Licensed Fiduciary Record-keeping**

By virtue of section 26(1) of the Fiduciaries Law, the Commission may request a licensed fiduciary to provide the Commission with information reasonably required for the Commission to perform its functions. In this respect, a licensed fiduciary which administers a PTC or a PTF should ensure that the records of the PTC or any PTF it administers including beneficial ownership information on the PTC, its directors and its controllers, and on the settlor, beneficiaries and any protector (if relevant) of the trust or trusts for which it acts will be made available for inspection by the Commission upon request. For the avoidance of doubt, this includes all PTCs and PTFs a licensed fiduciary administers, whether or not the entity is acting by way of business.

## Appendix - PTC Application Decision Tree

