

THE PROSPECTUS RULES and GUIDANCE, 2021

The Prospectus Rules, made in accordance with the Protection of Investors (Bailiwick of Guernsey) Law, 2020¹ (“the Law”), are set out in this document.

Further guidance, provided by the Guernsey Financial Services Commission (“the Commission”), is set out in shaded boxes.

¹ Order In Council No. XVIII of 2020.

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PART 1 INTRODUCTION

1.1 Application

- (1) The Prospectus Rules 2021 replace The Prospectus Rules 2018².
- (2) The Commission may in its absolute discretion, by written notice, exclude or modify the application of any provision of these Rules.
- (3) The Commission may issue supplementary guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework. Such guidance will not constitute rules of the Commission.
- (4) Unless specifically agreed otherwise by the Commission these Rules apply to every prospectus in relation to –
 - (a) registered investment schemes;
 - (b) an offer by a company or limited partnership, that is registered in the Bailiwick; or unit trust that is governed by any of the laws of the Bailiwick of any Category 2 controlled investment; or
 - (c) an offer to the public in the Bailiwick of any Category 2 controlled investment, wherever the offeror is domiciled.
- (5) The Prospectus Rules do not apply to –

² G.S.I. No. 31 of 2018.

- (a) any offer of a Category 2 controlled investment that is listed or traded on any stock exchange, in respect of a company, limited partnership or unit trust registered or incorporated in a country or territory in which the local regulatory body is an ordinary member, associate member or that is, or affiliate of IOSCO or listed on an exchange that is supervised by a member of IOSCO;
- (b) a private investment fund;
- (c) a promotion directly communicated to an identifiable category of persons, not exceeding 50 in number, if those persons are in possession of sufficient information as to be able to make a reasonable evaluation of any offer included in the promotion and are the only persons who may accept such an offer; or
- (d) a “Red Herring” prospectus, which is to be circulated in advance of the final offer, which contains appropriate disclaimers.

Guidance Note

The Commission will look through any nominee arrangement, to the underlying investors, to determine whether the offer has been promoted to more than 50 persons.

- (6) The directors in the case of a company, or the general partner in the case of a limited partnership, or the manager or trustee in the case of a unit trust, or any such persons with actual responsibility for the preparation of the prospectus are responsible for compliance with these Rules.

Guidance Note: This document takes a two-level approach –

- the Rules set out the standards to be met; and
- guidance notes present suggested ways of showing compliance with the Rules.

Licensees may adopt alternative measures to those set out in the guidance so long as it is possible to demonstrate that such measures achieve compliance.

The text contained in shaded boxes contains guidance from the Commission and does not form part of the Rules.

PART 2 INFORMATION TO BE SPECIFIED IN PROSPECTUS

2.1 Details relating to the offer

(1) The prospectus must state the following –

(a) the names, occupations, and addresses of –

(i) the offerors or vendors; and

(ii) any promoter,

of the securities or membership of the company, limited partnership, interests of the limited partnership, or units of the unit trust;

(b) the terms applicable to the acquiring of the securities or membership of the company, limited partnership interests, or units and, if those terms include a price that is payable; the method, time, and place of payment;

(c) the opening and closing dates and times of the offer;

(d) the minimum amount, if given, required to be raised by the offer;

(e) when and how monies will be returned in the event of the offer not being completed or any securities, limited partnership interests, or units applied for not being allotted;

(f) if known at the date of the issue of the prospectus, the anticipated date and forecast amount of the first distribution or interest payment on the securities, limited partnership interests, or units that are the subject of the offer;

- (g) general particulars of any property that is to be acquired with the proceeds of the offer; together with any investment restrictions that apply; and
- (h) in the case of any business that is intended to be acquired with the proceeds of the offer; the length of time during which that business has been carried on and summary financial information, if known at the date of the issue of the prospectus.

2.2 Capital

- (1) The prospectus must state the following, where applicable –
 - (a) in the case of a limited liability company; particulars of the share capital and securities that are the subject of that offer;
 - (b) in the case of a company limited by guarantee; an invitation to become a guarantor member and particulars of the amount of the guarantee;
 - (c) in the case of a limited partnership; particulars of the interests that are the subject of the offer; and
 - (d) in the case of a unit trust; particulars of the units that are the subject of the offer,

together with details of any existing securities, limited partnership interests, or units that are not part of the offer.

- (2) In the case of a cell company, only the details of cell share capital of the particular cell, or the incorporated cell share capital of the particular incorporated cell company, which is subject to the offer must be disclosed.

2.3 Goodwill, preliminary expenses, and benefits

- (1) The prospectus must state the value of goodwill and preliminary expenses, and the accounting treatment as required by these Rules, or any benefit given to the promoter from the proceeds of the offer.

2.4 Contracts

- (1) The prospectus must state the dates of, parties to, and general nature of every material contract not being –
 - (a) a contract or agreement entered into in the ordinary course of the business carried on, or intended to be carried on, by the offeror; or
 - (b) a contract entered into more than two years before the date of issue of the prospectus.
- (2) Management agreements are material and must be disclosed.

2.5 Interest of directors

- (1) This rule applies to the directors in the case of a company, protected cell company, or incorporated cell company; the directors of the managing general partner of a limited partnership scheme, the directors of a trustee and the directors of the manager of a unit trust scheme.
- (2) The prospectus must state the following, where applicable –
 - (a) full particulars of the nature and extent of any direct or indirect interest in the company, or in the securities that are the subject of the offer, of every director and member of senior management of the company; including any shareholdings by the directors and members of senior management; and

- (b) details of all sums paid, or agreed to be paid, to any such director, in cash or shares or otherwise, by any person to induce that director to become or to qualify as a director, or for services rendered by the director or by the firm.

2.6 Options and prior interests

- (1) The prospectus must state the details of any subscriptions, allotments, or options to be given, or already existing, in respect of any other securities of the company, limited partnership interests of the limited partnership, or units of the unit trust; including any that have a prior right over the securities, limited partnership interests, or units covered by the offer to a distribution of the profits or assets of the offeror.

2.7 Borrowings, indebtedness, and hedging powers

- (1) The prospectus must state the details of all borrowings or indebtedness of the offeror and the extent of any mortgage, charge, or security interest over, or attaching to, the assets of the offeror as at the date of the prospectus, or an appropriate negative statement, and the details of any hedging powers.

2.8 Accounts and reports

- (1) The prospectus must state the following –
 - (a) where applicable, current financial information on the offeror, including a copy of the latest audited accounts of the offeror accompanied by a report on those financial statements by the offeror's auditors;
 - (b) the generally accepted accounting practices or principal accounting policies that will be applied to the preparation of the offeror's accounts;

- (c) the duration of the first accounting period, where relevant;
- (d) the accounting date of the offeror;
- (e) when reports will be published, distributed, or available to holders in relation to the accounting date of the offeror;
- (f) any other reports of a specialist nature by any person who could be described as an expert on any aspect of the business of the offeror, identifying any unusual element of risk to the investor; and
- (g) when any other reports will be published, distributed, or available to holders.

2.9 Registered office and register of members, limited partnership interests, or unitholders

- (1) The prospectus must state the address of the registered office of the offeror, where applicable, and the address at which its register of members, limited partners, or unitholders is kept.

2.10 Principal establishments

- (1) The prospectus must state the location and nature of the offeror's principal operating establishments.

2.11 Designated administrator and designated custodian or trustee

- (1) This rule applies to registered investment schemes only.
- (2) The prospectus must state the name and addresses of the following –
 - (a) the designated administrator;

- (b) the designated custodian or trustee, in respect of a registered open-ended investment scheme; and
- (c) the name of the custodian, if appointed, in respect of a registered closed-ended investment scheme.

2.12 Directors and secretary

- (1) This rule applies to the directors and secretary, in the case of a company, protected cell company, or incorporated cell company, the directors of the managing general partner of a limited partnership scheme, and the directors of a trustee and the manager of a unit trust scheme.
- (2) The prospectus must state the following –
 - (a) the names, business occupations, and addresses of the directors or proposed directors; and
 - (b) the name, qualifications, and address of the secretary, where applicable.

2.13 General partner of a limited partnership

- (1) The prospectus must state the following –
 - (a) its name;
 - (b) place and date of registration or incorporation; and
 - (c) the address of its registered office.

2.14 Trustee of a unit trust

- (1) The prospectus must state the following –
 - (a) its name;
 - (b) place and date of incorporation; and
 - (c) the address of its registered office.

2.15 Other parties

- (1) The prospectus must state the following –
 - (a) the name and address of the offeror's auditors;
 - (b) the name and address of the offeror's legal advisers; and
 - (c) the name and address of the offeror's principal bankers.

2.16 Significant beneficial ownership

- (1) The prospectus must state the following –
 - (a) shareholdings of those persons who hold a significant beneficial ownership interest in the offeror at the date of the prospectus;
 - (b) with respect to tender offers, take-over bids, and other transactions intended to effect a change of control as defined by the Law; or that potentially may result in a change of control; or that may consolidate control; information necessary to make an informed decision; and
 - (c) the names of those holding significant beneficial ownership in the –

- (i) designated administrator, designated custodian, or designated trustee;
 - (ii) general partner, in the case of a limited partnership; or
 - (iii) trustee, in the case of a unit trust,
- acting in relation to a registered collective investment scheme.

2.17 Voting and other rights

- (1) The prospectus must state the following –
 - (a) the arrangements that will exist for general meetings;
 - (b) any class rights that will exist;
 - (c) the voting rights that will be exercisable at meetings of unitholders; and
 - (d) a summary of the rights conferred upon or attaching to unitholders of the securities, limited partnership interests, or units that are the subject of the offer in the prospectus.

2.18 Additional information

- (1) The prospectus must state any other material information, including risk disclosures, that an investor would reasonably require to enable such investor to make an informed judgment about the merits of investing in the securities, limited partnership interests, or units offered.

2.19 Date of issue

- (1) The prospectus must state the date of issue.

PART 3 STATEMENTS TO BE INCLUDED

3.1 Statements to be included in the prospectus

- (1) The prospectus must include the statement set out at Schedule 1.
- (2) The prospectus, in respect of the offer for the issue of securities, limited partnership interests, or units must include the statement set out at Schedule 2.

PART 4 CIRCULATION

4.1 Circulation of prospectus

- (1) A person must not circulate a prospectus in the Bailiwick; and no company, limited partnership, or unit trust registered or otherwise established in the Bailiwick, must circulate, or procure the circulation, of a prospectus outside the Bailiwick unless the following conditions apply –
 - (a) the prospectus contains the information set out in Part 2;
 - (b) the prospectus includes the statements specified in Part 3;
 - (c) the Commission has received –
 - (i) a final copy of the prospectus; including any reports referred to within the prospectus;
 - (ii) the application fee;
 - (iii) such other particulars as the Commission may require; and
 - (d) the Commission has registered the prospectus.

PART 5 INFORMATION TO BE PROVIDED TO INVESTORS

5.1 Changes in content

- (1) Changes to any matter required to be included in a prospectus, in accordance with rules 2.11 to 2.15, must be immediately notified to investors in an appropriate format.
- (2) A copy of the notification must be provided to the Commission, by electronic means, as soon as practicable.
- (3) Where the change is to a prospectus, it must be resubmitted to the Commission for registration.
- (4) If the change takes the form of a supplement, then the combination of prospectus and supplement must comply with the requirements of Part 2.

Guidance Note:

Notification to investors may be made by an appropriate announcement on a website, regulatory announcement service, email, or letter.

PART 6 GENERAL PROVISION

6.1 Interpretation

(1) In these Rules terms have their ordinary meaning unless specifically defined in the Law or in these Rules.

(2) In these Rules the following definitions should be followed -

“cell company” means a protected cell company, incorporated cell company, and any company by which the segregation of assets is achieved, according to class, by either statutory or contractual segregation;

“holder”, in relation to a share in a registered collective investment scheme, means the person who is entered in the register as the holder of the share, or unit, or limited partnership interest; or the first named holder in the case of joint holders;

“IOSCO” means International Organisation of Securities Commissions;

“manager” means the person appointed manager of a registered collective investment scheme including, the general partner (appointed under a limited partnership agreement), the manager of a unit trust (appointed under a unit trust instrument); or that person appointed by the trustee, under a management agreement, to discharge the duties under a management agreement;

“offer” means the offer for issue of securities, limited partnership interests, or units of a registered investment scheme, or any Category 2 controlled investment;

“offeror” or **“issuer”** means the company, limited partnership, or unit trust; the securities, limited partnership interests, or units of which are the subject of the offer in the prospectus;

“private investment fund” means a collective investment scheme declared in a registration issued by the Commission, in accordance with the Private Investment Fund Rules, 2021 and section 8 of the Law, to be a private investment fund;

“prospectus” means any prospectus, notice, circular, or other document containing detailed information about an offer to the public of any Category 2 controlled investment for subscription, purchase, or exchange and, in the case of a registered collective investment scheme, includes information particulars, prospectus, scheme particulars, offering memorandum, explanatory memorandum, term sheet, application form, subscription agreement, and any other similar documents or any combination of the foregoing;

“registered investment scheme” means an open-ended investment scheme or a closed-ended investment scheme declared in a registration issued by the Commission under section 8 of the Protection of Investors (Bailiwick of Guernsey) Law, 2020 and recognised as a registered investment scheme under the Registered Collective Investment Scheme Rules 2021 for the purposes of the Law;

“senior management” includes members of the administrative, supervisory, and management bodies, and partners with unlimited liability;

“significant beneficial ownership”, in relation to a company, limited partnership, or unit trust, means an investor who, alone or with associates, is entitled to exercise, or control the exercise of, or has the option to acquire securities that would upon exercise entitle the investor to exercise, or control the exercise of, 15 percent or more of the voting rights in a general meeting of that company, limited partnership, or unit trust.

PART 7 SAVINGS, REVOCATIONS, CITATION AND COMMENCEMENT

7.1 Savings

- (1) Any prospectus in circulation on the commencement of these Rules, and registered under either The Prospectus Rules 2008 or The Prospectus Rules 2018, will continue as if those Rules were still in force. Any changes to the prospectus will take effect in accordance with Part 5 of these Rules.
- (2) Any exclusion or modification granted by the Commission, under The Prospectus Rules 2018, will continue to apply where the Law and these Rules provide scope for such exclusions and modifications.

7.2 Revocations

7.2.1 Revocation of The Prospectus Rules 2018

- (1) The Prospectus Rules 2018 are revoked.

7.3 Citation and commencement

- (1) These rules may be cited as The Prospectus Rules 2021.
- (2) These rules come into force on 1st November 2021.

SCHEDULE 1

Statement to be included in all prospectuses:

“Neither the Guernsey Financial Services Commission nor the States of Guernsey take any responsibility for the financial soundness of the [company, limited partnership, or unit trust] or for the correctness of any of the statements made or opinions expressed with regard to it.

If you are in any doubt about the contents of this document you should consult your accountant, legal or professional adviser, or financial adviser.

[The directors of the company, the general partner of the limited partnership, or manager or trustee of a unit trust] have taken all reasonable care to ensure that the facts stated in this document are true and accurate in all material respects, and that there are no other facts the omission of which would make misleading any statement in the document, whether of facts or of opinion. [All the directors, general partner, manager or trustee accept responsibility accordingly.]”

SCHEDULE 2

Statement to be included in any prospectus in respect of the offer for the issue of securities, limited partnership interests, or units:

“It should be remembered that the prices of [securities, limited partnership interests, or units] and the income from them can go down as well as up.”