

Suspended Funds

Background

In exercising its statutory duties, the Commission has, historically, been prepared to consider requests to suspend the authorisation or registration of a Guernsey regulated collective investment scheme when such a scheme reaches the end of its term/life and liquidators are appointed, or where a scheme enters into voluntary liquidation in non-contentious circumstances. The Commission intends to continue to accept such requests for its consideration, in the appropriate circumstances.

Regulatory Position of Suspended Schemes

Under the law, an authorised or registered collective investment scheme remains an authorised or registered collective investment scheme for the purposes of the Enforcement Powers Law and the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (“the POI Law”) during a period of suspension of its authorisation or registration. As such a suspended scheme and its licensed service providers remain subject to all of the same relevant laws, rules and regulations as a scheme whose authorisation or registration is not suspended, including, for the avoidance of doubt, all relevant AML/CFT obligations and responsibilities in relation to the scheme.

It is therefore important that the Commission maintains appropriate levels of regulatory oversight of suspended schemes, from an investor protection perspective; our wider responsibilities to maintain and protect the reputation of the Bailiwick of Guernsey; and our compliance with international standards.

AML/CFT considerations

The forthcoming inspection by Moneyval also serves as a timely reminder of the importance of ensuring that appropriate AML/CFT protections are maintained and not overlooked in cases where a scheme’s authorisation or registration is suspended. In this respect, the requirements of the AML/CFT Handbook apply both prior to, and throughout, any period of suspension of a scheme’s authorisation or registration. Prior to suspension, a POI Licensed firm must be nominated by a scheme to be responsible for investor CDD. Such a POI licensed firm may continue to fulfil this role if a scheme’s authorisation or registration is suspended. However, where a third party liquidator is appointed to a suspended scheme, and that liquidator is registered as a Prescribed Business, the Commission would be prepared to consider, without prejudice, a request for that firm to be nominated as the firm responsible for investor CDD, in place of the POI licensed firm.

The AML/CFT responsibilities of any service providers to a suspended scheme remain the same as if the scheme is not suspended.

Ongoing Regulatory Requirements

Going forwards, in order to maintain effective regulatory oversight, the Commission will require periodic returns, as well as financial and other regulatory information to be provided in respect of suspended schemes, in much the same manner as for schemes which are not suspended.

In particular the Commission will require the submission, via its online portal, of annual returns (online form 143), quarterly statistical returns (online Form 141), and the Financial Crime Risk – Multi-Scheme Intermediary Return (online form 152) in respect of suspended funds, commencing from 1 January 2023. The relevant forms will be re-instated on the respective online portal timelines to facilitate these submissions.

Annual Fees

In order to undertake such regulatory oversight and for the cost of such to be shared equitably with all other licensed / authorised / registered entities, the Commission will raise annual fee invoices for suspended funds. It is planned that this will commence with the 2024 annual fees, and thus 2023 will be a transitional year where annual fees for suspended funds will be waived. From 1 January 2024 it is intended that the annual fee will be that which is applicable to the relevant type of authorised or registered scheme, and no distinction will be made between schemes which are suspended and those which are not, as all remain authorised / registered under the POI Law. It is not proposed to charge retrospectively for schemes which suspended in 2022, 2023 or during previous years, although it is intended that the annual fee will apply to all suspended schemes from 1 January 2024.

To be clear the planned policy for such future fees is intended simply to cover the costs of ongoing regulation of the suspended schemes (which remain authorised /registered under the POI Law), in the same manner as all other regulated entities are charged.

Given the Commission’s ongoing responsibility of regulatory oversight of such schemes, it is considered that the charging of fees for suspended funds, in line with the Commission’s “user pays” philosophy, will be the most appropriate means of equitably sharing the associated costs across the whole spectrum of regulated entities.

Derogations From Ongoing Audit Requirements

However, the Commission continues to be open to requests to modify or derogate from rules, where to do so would reduce unnecessary administrative burden without adversely impacting investor protection.

In particular, the Commission will be prepared to consider, in the appropriate circumstances (and without prejudice to the outcome of such consideration), a well-reasoned request to derogate from any requirement to appoint an auditor or to prepare and submit audited accounts to the Commission, where a scheme’s authorisation or registration has been suspended upon entering liquidation in non-adverse circumstances. Instead, the Commission would, where such derogations are issued, require un-audited financial accounts to be submitted for such suspended funds within the same timeframe, and using the same means of submission (online Form 143), as the rules would require for the submission of audited financial statements.

A formal request to derogate from any other Fund Rule requirement will be considered on a case by case basis, although it should be noted that where this would limit the Commission's regulatory oversight of such a suspended scheme or where it would adversely impact levels of investor protection, it is unlikely that the Commission would agree to any such request.