

**GUERNSEY FINANCIAL SERVICES COMMISSION**

**ADMINISTRATION AND/OR MANAGEMENT OF NON-Guernsey  
SCHEMES**

**GUIDANCE ON APPLICATIONS UNDER THE TWO-DAY FAST-TRACK  
APPROVALS PROCESS**

The purpose of this document is to provide guidance in respect of relevant issues relating to a Guernsey-licensed service provider's application for approval for conducting the restricted activities of administration and/or management in respect of an open-ended non-Guernsey scheme, due diligence issues that need to be considered by that service provider and the information required to be submitted to the Commission in support of an application under the two-day fast-track approvals process.

Any questions in relation to this guidance, including those in respect of the Commission's regulatory approach and the responsibilities of Guernsey-licensed service providers in their operation of such schemes should be referred in the first instance to the Applications Team within the Investment Business Division of the Commission.

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## **Approval for a Licensee to act in respect of a Non-Guernsey Scheme**

1. The Licensees (Conduct of Business and Notification) (Non-Guernsey Schemes) Rules 1994 (“the Non-Guernsey Schemes Rules”) require Guernsey-licensed service providers wishing to undertake the restricted activities of management, administration or custody to provide prior written notice to the Commission of such proposal. The Commission’s formal approval under the Non-Guernsey Schemes Rules is required before the licensee can act. This Guidance Note does not apply to Guernsey-licensed service providers who wish to undertake the restricted activity of custody.
2. Section 2.02 of the Non-Guernsey Schemes Rules requires the following information to be submitted in support of a relevant application:
  - (a) the prospectus, or latest draft prospectus, of the non-Guernsey scheme;
  - (b) a copy of the agreement, or latest draft agreement relating to the proposed administration and/or management services to be provided by the licensee to the non-Guernsey scheme;
  - (c) confirmation that no other licensee carries on or intends to carry on any of the restricted activities described in rule 2.01 in connection with the non-Guernsey scheme;
  - (d) details of any regulatory approval given by, or applied for from, the authorities in the country or territory in which the non-Guernsey scheme is, or is to be, incorporated or established;
  - (e) the notification fee as prescribed from time to time by Regulations made under Section 22 of the Law; and
  - (f) such other information as the Commission may require.
3. The Commission will issue the necessary approval under the Non-Guernsey Schemes Rules within two business days of receipt of the information and documentation set out under 2(a) to (f) above, together with signed Form NGSF (2013) – discussed below - and the application fee required under (e) above.
4. In considering applications, the Commission will take into account the Guidance Note to Rule 2.01 of the Non-Guernsey Schemes Rules, which states that approval will only be given if the open-ended non-Guernsey scheme would have been likely to obtain authorisation under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended had it been necessary.
5. Matters that the Guernsey-licensed service provider should consider in obtaining suitable due diligence are discussed below.

## **Due Diligence on The Promoter and/or Investment Manager**

1. The promoter and/or investment manager should be 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 institution itself, its directors, controllers and senior managers had not during the past 5 years been the subject of material 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 Guernsey-licensed service provider associated with the application must certify to the Commission that they have 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.
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 approval to conduct controlled investment business in respect of a non-Guernsey scheme 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 open-ended non-Guernsey scheme. The Guernsey-licensed service provider's consideration of these matters and conclusions arising should be documented. For the avoidance of doubt, this information does not have to be obtained through obtaining a Form PQ from a relevant individual, nor are such Forms to be submitted to the Commission.
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 Commission staff prior to submitting the formal application at the time they become aware of the issue.
6. Commission staff will assess licensees' application due diligence as part of their *post facto* monitoring of licensees. If the Commission were to find that warranties provided were defective, or misleading, the Commission would take action against the licensee and in appropriate cases would exclude that licensee from future participation in the self-certification programme.
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, they should consult Commission staff, prior to the submission of a formal application to 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 high 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. It would be expected that the Guernsey-licensed service provider would make direct contact with relevant individuals' previous employers as part of the necessary due diligence enquiries.

Promoters and/or investment managers would be expected to deal openly and honestly with the Commission and any other regulatory authority to whose regulation they are subject (either on a consolidated basis or directly).

(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.

A promoter and/or investment manager that is not regulated would be expected to maintain a surplus of shareholders' funds as disclosed in

its audited financial statements. Past performance in this respect should also be considered to ensure that relevant requirements have been consistently met in the past.

Promoters and/or investment managers would be expected to maintain adequate net liquid assets such that they are able to settle their debts when they fall due.

In the case of promoters and/or investment managers with a limited history, due to the fact that they are newly or recently established (that is, not being able to produce audited annual financial statements for a period of at least 24 months), it will be necessary for the Guernsey-licensed service provider to consider financial projections relating to the proposal under consideration. It will also be necessary to consider whether the controllers, directors and management of such promoters and/or investment managers have previously been responsible for considering the solvency of an entity (for example, if they held a director role or financial control function). Where individuals have been directors or held relevant positions at entities that have gone into liquidation or suffered financial loss it will be necessary to consider the role undertaken by the relevant individual in such situations.

(c) Competence

The most obvious way to demonstrate competence is to have established a favourable track record, in a business similar to that relevant to the application.

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, it will be necessary for Guernsey-licensed service providers 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.

## **Form NGSF (2013)**

1. In order to consider approving the Guernsey-licensed service provider to undertake the restricted activities of administration and/or management in respect of an open-ended non-Guernsey scheme, the Commission must receive a copy of the application form, Form NGSF (2013), which must be signed by the proposed Guernsey-licensed administrator/manager. The form contains the following requirements:
  - (a) Warranties to the Commission from the proposed administrator/manager that they have performed sufficient due diligence to be satisfied that:
    - (i) the promoter and associated parties are fit and proper;
    - (ii) the economic rationale for the proposed open-ended non-Guernsey scheme and any attendant risks are clearly disclosed;
    - (iii) the information supplied is complete and accurate to the best of the warrantor's knowledge at the time of submission and there are no other facts material to the application of which the Commission should be aware;
    - (iv) no other licensee carries on or intends to carry on the restricted activity described in rule 2.01 of the Non-Guernsey Schemes Rules in connection with the non-Guernsey scheme.

**The Commission attaches great importance to these warranties. It expects applicants to be able to demonstrate that they have documentary evidence to support the warranties given, and to be able to produce that evidence immediately should the Commission request it. Applicants who cannot substantiate their applications may, as noted in paragraph 6 on page 3 of this guidance, find themselves excluded from participation in the self-certification programme.**

2. The following documentation should be enclosed with the Form NGSF (2013)
  - the Scheme Particulars/Prospectus/Offering Document, or equivalent, of the non-Guernsey scheme;
  - a copy of the agreement, or latest draft agreement relating to the proposed administration/management to be provided by the licensee to the non-Guernsey scheme;

- details of any regulatory approval given by, or applied for from, the authorities in the country or territory in which the non-Guernsey scheme is, or is to be, incorporated or established; and
- the notification fee as prescribed from time to time by Regulations made under Section 22 of the Law.

2 January 2013