

**GUIDANCE NOTE – PROMOTION OF INVESTMENTS UNDER THE  
PROTECTION OF INVESTORS (BAILIWICK OF GUERNSEY) LAW, 1987  
("THE LAW")**

*(Originally issued November 2000)  
(Reissued with minor clarifications April 2001)*

**Introduction**

1. This Guidance Note sets out the views of the Guernsey Financial Services Commission ("the Commission") on the scope of Section 1(1) of The Protection of Investors (Bailiwick of Guernsey) Law 1987 ("POI Law") in the context of the promotion of investments, and hence the stance which the Commission will take in this context in the exercise of its statutory powers under the POI Law.
2. Under Section 1(1) of the POI Law "a person shall not carry on, or hold himself out as carrying on any controlled investment business in or from within the Bailiwick, except under and in accordance with the terms of a licence"; while under Section 1(3) of the POI Law, "a person carries on controlled investment business if, by way of business, he engages in a restricted activity in connection with a controlled investment".
3. Promotion is a "restricted activity" and is defined in Schedule 2 to the POI Law as: -
  - “(a) advertising;
  - (b) issuing a prospectus, application form or proposal form;
  - (c) circulating or making available promotional material”.
4. "Controlled investments" are identified and described in detail in Schedule 1 to the POI Law under two Categories, namely "Collective Investment Schemes" and "General Securities and Derivatives".

**The scope of Section 1(1)**

5. As set out at paragraph 2 above, Section 1(1) of the POI Law applies to the carrying on (or holding out as carrying on) of controlled investment business in or from within the Bailiwick of Guernsey. Thus a person who has a permanent place of business in the Bailiwick, or makes it known that he may be contacted at a particular address in the Bailiwick, or visits the Bailiwick, in each case for the purpose of carrying on controlled investment business, clearly requires a licence under Section 1(1).
6. The position of persons other than those described at 5 above ('overseas persons') is less clear. For example, it has been suggested that the physical location of a person who offers investment services is immaterial, and that it is where his services have effect that is pertinent.

7. It is the Commission's view that there is a distinction between "active" and "passive" promotion of controlled investments, as follows: -
- (a) 'Active' promotion  
Where an overseas person specifically targets potential investors in the Bailiwick, eg. by sending promotional material (other than promotional material specifically requested by a Bailiwick resident, such request not having been solicited directly or indirectly in the Bailiwick by the overseas person), cold-calling, advertising in the Guernsey Press and Star or other Bailiwick publications, or by electronic media aimed specifically at Bailiwick residents, it is the Commission's view that this is a licenseable activity.
  - (b) 'Passive' promotion  
In other cases, eg. advertisements in the international press, (even if such advertisements may mention Bailiwick residents provided residents of other jurisdictions are also mentioned), offers by electronic media (subject to the above proviso), or where an overseas person is responding to an approach from a Bailiwick resident which cannot be regarded as having been specifically solicited by the overseas person in any way, it is the Commission's view that this is not a licenseable activity.
8. It is hoped that the foregoing will be helpful to overseas persons and their professional advisers. The Commission is always willing to discuss specific cases with potential promoters or their advisers.
9. It is also appropriate to confirm that an overseas person may promote controlled investments by using the services of a person licensed under the POI Law to carry on the restricted activity of 'promotion'.

### **The Control of Borrowing (Bailiwick of Guernsey) Ordinance 1959 ("COB")**

10. In conclusion, it is pertinent to draw attention to COB under which the prior consent of the Advisory and Finance Committee ("the Committee") of the States (Parliament) of Guernsey is required for the circulation in the Bailiwick of any offer for subscription or sale of any securities of any body corporate not incorporated in any part of the Bailiwick. Such consent is not required in respect of the securities of any body corporate incorporated in Great Britain if such an offer is, or at any time in the previous year has been, circulated in Great Britain in accordance with the provisions of the Companies Act 1985 and the Financial Services Act 1986.

The Committee has delegated the function of granting consents under COB to the Commission, and where consent is required the Commission will normally be able to respond immediately to requests for consent.