

**THE LICENSEES (CONDUCT OF BUSINESS
AND NOTIFICATION) (NON-Guernsey
Schemes) Rules 1994**

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GUERNSEY FINANCIAL SERVICES COMMISSION

THE LICENSEES (CONDUCT OF BUSINESS AND NOTIFICATION) (NON-GUERNSEY SCHEMES) RULES 1994

The Guernsey Financial Services Commission (the “Commission”), in exercise of the powers conferred on it by sections 12 and 16 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (the “Law”) as amended hereby makes the following rules:

PART 1 - INTRODUCTORY

1.01 Citation and commencement

These rules may be cited as the Licensees (Conduct of Business and Notification) (Non-Guernsey Schemes) Rules 1994 (the “Non-Guernsey Schemes rules”) and shall come into operation on 1 November 1994.

1.02 Interpretation

(1) Unless the context otherwise requires, in these Non-Guernsey Schemes rules expressions defined in the Law have the same meanings as they have in the Law, and the following expressions have the meanings assigned to them by this rule:

“**director**” means, in relation to:-

- (a) a body corporate, a person occupying in relation to it the position of a director (by whatever name called) and any person in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors of that body are accustomed to act; and
- (b) a person which is not a body corporate:-
 - (i) in the case of a partnership, any partner other than a limited partner; and
 - (ii) in the case of an unincorporated association, any member of the governing body or other equivalent persons.

“**Investment adviser**” means a person who provides the manager or directors of a non-Guernsey scheme with advice as to the merits of investment opportunities available to that scheme whether or not he regularly exercises a discretionary power over investments for the account of that scheme;

“**non-Guernsey scheme**” means a collective investment scheme which is neither incorporated nor established under the law of any part of the Bailiwick of Guernsey nor authorised under the Law;

“the Principles” means the Principles of Conduct of Finance Business published and circulated by the Commission on 22 March 1991 and from time to time thereafter.

- (2) The Interpretation (Guernsey) Law, 1948 applies to the interpretation of these Non-Guernsey Schemes rules throughout the Bailiwick of Guernsey.
- (3) A reference in these Non-Guernsey Schemes rules to:-
 - (a) an enactment is to that enactment as from time to time amended, repealed and replaced, extended or applied by or under any other enactment;
 - (b) a document, written notice or written instructions, shall be taken to be a reference to a document, notice or instructions given in any legible form provided that a printed copy of the document, notice or instructions can be made.
- (4) References in these Non-Guernsey Schemes rules to a numbered rule shall be construed as references to the rule bearing that number in these Non-Guernsey Schemes rules.
- (5) References in any of these Non-Guernsey Schemes rules to a numbered paragraph shall, unless the reference is to a paragraph of a specified rule, be construed as references to the paragraph bearing that number in the rule in which it appears.
- (6) A guidance note appended to a rule or to a paragraph of a rule gives guidance as to the criteria which the Commission would apply in connection with that rule. It is not part of the rules.

PART 2 - PROVISION OF SERVICES TO NON-Guernsey SCHEMES

2.01 Prior notification to Commission

A licensee shall give prior written notice to the Commission of any proposal to carry on the restricted activities of management, administration or custody in connection with a non-Guernsey scheme, other than a scheme for the time being excluded from section 7 of the Law by virtue of section 29(2) of the Law and the Investor Protection (Designated Countries and Territories) Regulations 1989 and 1992.

2.02 Information to be provided

The notice required under rule 2.01 shall be accompanied by:

- (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 management, administration or custody 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.

2.03 Requirement for specific approval before providing services

No effect shall be given to any such proposal as is mentioned in paragraph 2.01 unless or until the Commission has given its specific approval to the proposal.

Guidance Note

In considering whether or not to approve a proposal under rule 2.01, the Commission will take into account:-

- (a) the protection and enhancement of the reputation of the Bailiwick as a financial centre;
- (b) the general nature and specific attributes of the controlled investment business to which the proposal relates;
- (c) what, if any, economic benefit the Bailiwick is likely to derive from the carrying on of that business;
- (d) any other factors which the Commission think is appropriate to consider.

Normally, approval will only be given if the non-Guernsey scheme would have been likely to obtain authorisation under the Law had such authorisation been necessary.

PART 3 - CONDUCT OF BUSINESS RULES

3.01 Rules applicable to licensees providing services to non-Guernsey schemes

When carrying on the restricted activities of management, administration or custody in connection with a non-Guernsey scheme, a licensee shall -

- (a) observe the standards set out in the Principles;
- (b) carry on these restricted activities in accordance with the principal documents or other agreements relating to the non-Guernsey scheme to which the licensee is a party.

3.02 Rules applicable to other licensees in connection with non-Guernsey schemes

When carrying on restricted activities other than management, administration or custody in connection with a non-Guernsey scheme, a licensee shall observe the standards set out in the Principles.

Guidance Note

Although the Principles of Conduct of Finance Business do not on their own have the force of law, they are a statement of the standards expected of licensees under the Law. Failure to comply with any of the Principles will be taken into consideration by the Commission when reviewing the fitness and properness of licensees, and may thus lead to the suspension or cancellation of a licence. In the context of licensees subject to rule 3.02, the Commission would expect them to take into account, inter alia, the track record and reputation of the promoter of the non-Guernsey schemes in connection with which they carry on the restricted activities of promotion, subscription, registration, dealing or advising, and the suitability of the schemes for their customers and clients.

PART 4 - NOTIFICATION RULES

4.01 Immediate notifications

A licensee must give written notice forthwith to the Commission in respect of any non-Guernsey scheme, other than a scheme for the time being excluded from section 7 of the Law by virtue of section 29(2) of the Law and the Investor Protection (Designated Countries and Territories) Regulations 1989 and 1992, in connection with which the licensee is carrying on the restricted activity of management, administration or custody, of:-

- (a) a proposed change of any of the following:-
 - (i) manager;
 - (ii) trustee or custodian;
 - (iii) investment adviser;
 - (iv) directors; and
- (b) a proposed change of name or of ultimate or intermediate ownership of any of the parties listed in (a)(i) - (iii) above; and
- (c) any alteration to the agreement(s) under which the licensee is providing management, administration or custodian services to the scheme;
- (d) any proposed alteration to the scheme, including its name and its investment, borrowing and hedging powers; and
- (e) any proposal to reconstruct, amalgamate or terminate the scheme; and
- (f) the withdrawal or revocation of any licence, authorisation or registration granted to the scheme by any regulatory authority outside Guernsey, or the appointment of inspectors by any such authority to investigate the affairs of the scheme, or the imposition of disciplinary measures or sanctions by any such authority on the scheme or on the parties listed at (a)(i) - (iv) above; and
- (g) any other matter involving the scheme or any of the parties listed at (a)(i) - (iv) above which is such as to give the licensee reasonable cause to believe may be of material significance for the exercise of the Commission's functions under the Law or these rules.

4.02 Reports and accounts and prospectuses

A licensee must send to the Commission, on publication, a copy of all reports and accounts and revised Prospectuses issued by any non-Guernsey scheme referred to in rule 4.01.

Guidance Note

If, as a result of information received under Part 4 or otherwise, the Commission considers that it is necessary or desirable for a licensee to cease providing services to a non-Guernsey scheme, it will exercise its powers under Section 5(1) of the Law. This may include prohibiting the licensee from continuing to act for the scheme in question.

PART 5 - TRANSITIONAL PROVISIONS

5.01 Application

This Rule applies to all licensees who, at the date these non-Guernsey Schemes rules came into force, were carrying on the restricted activities of management, administration or custody in connection with a non-Guernsey scheme, other than a scheme exempted by virtue of Schedule 2 to the Investor Protection (Designated Countries and Territories) Regulations 1989 and 1992.

5.02 Continuation of provision of services subject to submission of information to Commission

The controlled investment business described at rule 5.01 will be deemed to have been given approval under rule 2.03 upon receipt by the Commission of the information referred to at rule 2.02(a), (b), (c), (d), and (f) above, unless such information reveals that the scheme is required to be authorised under the Law.