



Guernsey Financial Services Commission

PERSONAL QUESTIONNAIRES GUIDANCE NOTE

INTRODUCTION

This document is intended to provide assistance by highlighting and clarifying areas of uncertainty that may arise when completing a Personal Questionnaire (“Form PQ”). This document is not a substitute for the regulatory Laws¹ or rules and guidance made thereunder and reference should be made to them before completing the Form PQ.

It is a requirement under the regulatory Laws that licensees and individuals in Prescribed Positions be fit and proper.² In order to assess whether this requirement is satisfied, the Commission gathers information about any individual who is intended to assume a Prescribed Position. As part of its general functions, the Commission requires that individuals being appointed to a Prescribed Position complete a Form PQ to evidence their fitness and propriety. The Form PQ is designed so that individuals can provide information to show that they are “fit and proper” to undertake the Prescribed Position, both at the outset and on an ongoing basis.

Some of the regulatory Laws provide that appointments to certain Prescribed Positions may not be filled until the Commission has approved or not objected beforehand, and, in other instances, the Commission may object to the appointment following receipt of notification about the Prescribed Position appointment.³ Please refer to the relevant regulatory Law if you are uncertain of whether the role in question is a Prescribed Position.

If, after reading these Guidance Notes, and the relevant regulatory Law, you have any further questions concerning the completion of the Form PQ, you are asked to contact the Authorisations team of the Commission.

¹ The Financial Services Commission (Bailiwick of Guernsey) Law, 1987, The Banking Supervision (Bailiwick of Guernsey) Law, 1994, The Regulation of Fiduciaries, Administration Businesses and Company Directors etc (Bailiwick of Guernsey) Law, 2000, The Insurance Business (Bailiwick of Guernsey) Law, 2002, The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, The Protection of Investors (Bailiwick of Guernsey) Law, 1987, The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008, The Criminal Justice (Proceeds of Crime)(Legal Professionals, Accountants and Estate Agents)(Bailiwick of Guernsey) Regulations, 2008, The Financial Services Commission (Site Visits) (Bailiwick of Guernsey) Ordinance, 2008, The Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) Ordinance, 2008; and The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, in each case, as amended from time to time.

² The Banking Supervision (Bailiwick of Guernsey) Law, 1994, Schedule 3; The Regulation of Fiduciaries, Administration Businesses and Company Directors etc (Bailiwick of Guernsey) Law, 2000, Schedule 1; The Insurance Business (Bailiwick of Guernsey) Law, as amended, Schedule 7; The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended, Schedule 4; The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended, Schedule 4; The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, Schedule 2.

³ The Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended, sections 14 and 22A; The Regulation of Fiduciaries, Administration Businesses and Company Directors etc (Bailiwick of Guernsey) Law, 2000, section 14; The Insurance Business (Bailiwick of Guernsey) Law, as amended, sections 25 and 29; The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended, section 27; The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended, section 28A.

DOCUMENTATION

The Commission requires that a Form PQ must be completed if the individual is not known to the Commission. In all other cases, the Form PQ should be updated in the portal or a new appointment form completed.

1. Persons Required to Submit a Form PQ

A completed Form PQ and an Appointment form must be submitted where an individual is to be / has been appointed to a Prescribed Position. Under the regulatory Laws, the Commission also has the power to request that an individual provide it with any information and documents it requires. This may include the completion of a Form PQ, regardless of whether the role or position is a Prescribed Position.

2. Licensee Consideration

Licensees and prospective licensees are expected to have performed sufficient due diligence to be satisfied that the information contained in a Form PQ is accurate and complete prior to its submission to the Commission. In this context, the term “licensee” includes those businesses registered as non-regulated financial services businesses.

3. Completeness

Disclosures made in a Form must be full, frank and unambiguous.

If there is any doubt about the relevance of information, it must be included. If the Commission’s review of a Form PQ reveals any matter that has not been disclosed, an objection or refusal to approve the appointment may be raised or the Commission’s consideration of an individual may be delayed. The provision of inaccurate or incomplete information may be taken into account when considering whether or not an individual is fit and proper.

It should not be assumed that information is known to the Commission because it is in the public domain or has been previously disclosed to the Commission or to another regulatory body.

The Commission reserves the right to make such enquiries and seek further information as it considers appropriate. It is important, therefore, to ensure that the most appropriate contact details are provided where requested.

4. Data Protection

Personal information provided in a Form PQ will be used by the Commission. For the purposes of The Data Protection (Bailiwick of Guernsey) Law, 2001, the Commission is considered to be a data controller. The Commission will use the Forms to satisfy its statutory duty under the regulatory Laws. Information disclosed in the Forms may be disclosed to third parties for those purposes. Further information may be found in the Commission’s Data Protection policy, which can be located on its website at www.gfsc.gg.

5. Ongoing Notification Obligations

The assessment of an individual’s fitness and propriety is a matter which the Commission considers on an ongoing basis. Whenever the information contained in an individual’s Form PQ is updated or changed in relation to their personal details, residence, employment, appointments and other business interests or the

information under the heading, “Probity, Judgement, Diligence & Integrity”, the information should be updated in the portal and the updated Form PQ submitted.

6. Forms – Specific Guidance – Manner of Completion

The Commission reserves the right to return a Form PQ that has not been completed in accordance with these Guidance Notes and to treat the notification requirement under the applicable regulatory Law as not having been satisfied.

The guidance which follows in these Guidance Notes is provided with reference to the numbering in the Form PQ.

Personal

1. Name(s)

The individual's name must be given in full, including all forenames and surnames.

The individual must also disclose any other names by which they have also been known, where these differ from their current full name (e.g. if the individual's full name is John James and he is otherwise known as Johnnie Jules), this must be disclosed.

Where the individual's name has changed, the details of all name changes that have occurred since the age of 16 must be disclosed. Both the individual's forename(s) and surname(s) used must be disclosed. The reason for the change must also be explained (e.g. marriage, deed poll, divorce etc). If the actual date of the name change is not known, the estimated year and month must be provided.

2. Birth Details

The individual's date of birth, country and city/town of birth must be disclosed.

3. Nationality and Dual Nationalities

The individual's nationality and how it was acquired must be disclosed (e.g. through birth, naturalisation, marriage, etc).

If the person is of dual nationality, both nationalities must be disclosed with an explanation on how each was acquired. If the individual's nationality has changed, all previous nationalities must be disclosed. If the actual date of the nationality change is not known, the estimated year and month must be provided.

4. Addresses

The individual's current private residential address, including postal code, must be disclosed. The period of residence must be identified by month and year. Where the individual currently occupies more than one residence, all addresses must be disclosed. The provision of a mailing address alone will not be considered a complete response to this section.

If the individual has changed private addresses at any time in the last 5 years, details of each address, including postal code, and the date of the change must be disclosed, together with the period of residence, identified by month and year.

Any gaps between residential addresses of a period of one month or more must be explained.

Any discrepancies between the country of private address and employment address must be explained (e.g. if the individual is a resident in the UK but their employer's address is in the US this must be explained). This should be done by emailing Authorisations@gfsc.gg.

5. Contact Details

At least one telephone number must be provided. It is recommended that your work telephone number is provided for any work related queries in the future which will be during office hours.

Positions

6. Current Prescribed Positions

The individual must input any current Prescribed Positions within entities regulated by or registered with the Commission, including appointments to Prescribed Businesses and Non-Regulated Financial Services Businesses.

This could include your current employment role, eg Managing Director of a firm, which would also be included under Section 7 'Employment'. Section 6 is only available on your first electronic submission and will be locked down on future submissions.

7. Employment

The individual must provide a full employment history for the 10 year period up to the date on which the Form is submitted. This includes any periods of self-employment. The individual's proposed/current and past employers' addresses, including postal codes, must be disclosed. The period of employment must be identified by month and year. Where employment throughout any of the 10 year period has been with a single employer but different roles have been held, details regarding the title, date of appointment and responsibilities of those positions must be disclosed. Any gaps in employment of one month or more must be disclosed and explained.

The reason for leaving each employment must be given. Where the reasons for leaving are related to termination, dismissal or other issues which may be relevant to the person's fitness and propriety, these must be disclosed and explained. The individual must also disclose any periods of time where they have been asked not to attend the workplace (whether with or without individual's agreement)⁴.

Directorships held as Part of Employment

The individual must disclose any directorships they hold or have held in relation to their employer's company, a subsidiary of the employer's company and/ or a company forming a part of a group of companies of which their employer's company forms a part. For example, if the individual acted or acts as a director of a nominee company wholly owned by their employer, the name of this company should be disclosed.

The individual must also disclose the name of any employer group or related companies or partnerships for which they have acted as a director, partner or a controller.⁵ The Commission reserves the right to request a list of any entities for which the individual acted as a director, partner or a controller, in their previous employment.

⁴ This includes, for example, where an employee has been placed on a period of absence during their notice period ("gardening leave"), where an individual cannot recommence employment due to certain post-employment contractor restrictions ("non-compete agreements"), or where the individual is suspended from or asked to leave the workplace due to the undertaking of a workplace investigation.

⁵ For the purpose of this section Guidance Notes, the term "controller" means, an individual with a holding of at least 15% or more of the voting power in general meeting of the company or any other company which that company is a subsidiary.

For client directorships held as part of the individual's employment, only the number of positions held has to be disclosed and this figure should be entered in the appropriate box. There is no requirement to list each entity name. The Commission reserves the right to request further information concerning these directorships.

If the individual's previous position title included the word "Director" but the duties of that position did not include those associated of a director as defined in these Guidance Notes, this need not be included in the number of directorships held as part of employment.

8. Appointments and Other Interests

The information requested in this section relates to those appointments the individual holds or has held in relation to entities unrelated to their current or previous employment. Any directorships to Non-Guernsey Schemes should be included here if they are not linked to your employment.

The entities' names, the jurisdictions in which they were registered or established, their principal activities, the individual's position and the commencement and cessation date (as applicable) must also be disclosed.

Unknown individuals must disclose any appointments or positions they hold or have held as a director, partner, controller, shareholder or company secretary within the last 10 years. However, if you are already known to the Commission and previously submitted a PQ, you are only required to disclose your current appointments.

Information disclosed in the Employment section should not be disclosed again in this section.

The Commission reserves the right to request further information concerning these appointments.

Competence

9. Licences and Other Authorisations

The individual must disclose all licences, registrations, authorisations or equivalent approvals (whether held personally or as a representative) that are or were held at any time in the previous 10 years, under the legislation of any other jurisdiction relating to banking, investment, insurance, company and trust formation and administration, carrying out business as a director or relating to any other financial services business or prescribed business. The commencement and cessation dates (where applicable) must be disclosed.

10 & 11. Professional Qualifications and Memberships

The individual is required to list all past and present professional qualifications they have obtained relevant to the position in question. If the qualification is no longer attainable or the awarding body has changed, this must be identified, where known. Where known, the current equivalent qualification and / or awarding body must be identified in an attachment to the completed Form and referenced to this question. Membership numbers, where issued, must also be identified. The commencement and cessation date (where applicable), must be disclosed. Details concerning the nature of the qualification or membership must also be disclosed.

12. Other Relevant Experience

The individual must provide any additional information about their areas of expertise and experience that they believe makes them suitable for the role or position. For example, if the individual is being appointed based on their particular set of skills, or to add to the overall balance of experience on the Board, this must be

explained. If the individual has no previous experience in the role or business to which they are to be appointed, the individual must explain why they are suitable for the position and any preparation or training they have undertaken in order to do so.

Probity, Judgement, Diligence & Integrity

The questions in this section seek historical information and have no time limit regarding the information requested, unless so specified in the question. In any case where the response to a question in this section is YES, full details must be given in the drop down boxes that will appear.

13.1 Criminal Convictions

If the answer to any of the questions in this section is YES, give particulars of the court judgement issued, the offence, the penalty imposed, and the date of conviction.

The Rehabilitation of Offenders Law provides the circumstances which, if present, will result in certain convictions being considered as spent and sets out a number of protections associated with spent convictions. However, by virtue of the Rehabilitation of Offenders Ordinance, the Commission can require the following persons to disclose any Relevant Spent Convictions (defined below) in the course of its assessment of the fitness and propriety of any such person:

- (i) to hold any financial or related services permission meaning any licence, consent, authorisation, certificate, registration or other permission required to be obtained from the Commission by or under any enactment;
- (ii) to be granted any consent pursuant to the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959; or
- (iii) to hold or engage in any office, occupation, employment or work in relation to:
 - (I) any licence, consent, authorisation, certificate, registration or other permission required to be obtained from the Commission by or under any enactment;
 - (II) any consent pursuant to the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959;
 - (III) any office, occupation or work in the employment of, or undertaken on behalf of, the holder of a financial or related services permission; or
 - (IV) any office, occupation or work in the employment of, or undertaken on behalf of, an applicant for a financial or related services permission, as a chief executive, controller, partner, associate, director, company secretary, trustee, manager, compliance officer, corporate secretary or money laundering reporting officer.

It is recommended that independent legal advice is obtained if there is any doubt as to whether a conviction is considered to be spent or is an offence that must be disclosed in the Forms.

13.2 Licence, Registrations, Authorisations, Professional Qualifications and Memberships

If the answer to any of the questions in this section is YES, provide the name of the overseeing body, the dates on or about which the event took place and the particulars of the events giving rise to the action taken and the particulars of any decision or disciplinary action undertaken.

13.3 Employment

If the answer to the first question is YES, give particulars of the event in question and the period in which it took place (indicated by month and year).

If the answer to the second question is YES, provide the name of the regulator or professional body, the name of employer, the date(s) on or about which the event took place and the particulars of the events giving rise to the action taken.

13.4 Litigation

If the answer to any of these questions is YES, provide the name of the court in which the proceedings were commenced, the dates on or about which the event took place, the particulars of the event(s) giving rise to the action in question, and the particulars of any court order or judgement.

13.5 Solvency

If the answer to any of these questions is YES, individuals are required to make full and frank disclosure of any proceedings relating to both their personal solvency and that of any corporate entities in which they had a controlling interest or acted as a director.

The disclosure must include details of all liquidations, whether voluntary or compulsory, bankruptcy, receivership, the dissolution of partnerships and limited partnerships, any enforced claim or sale by the court against cash or assets held and any administration orders. This would include any equivalent proceedings or orders howsoever categorised in any jurisdiction.

The Commission does not require disclosure where a company, such as an investment company or fund, is wound up on a pre-determined date or duration, or a partnership has been dissolved due to the retirement or death of a partner.

Declaration and Consent

The individual must tick to confirm that they agree with the Declaration.

The individual must choose the reason for submitting their Form PQ from the drop down options.

If the individual has been or will be appointed to a new prescribed position, an accompanying appointment form must be submitted detailing the position, entity name, proposed/actual start date, job title and job responsibilities. Note that this does not preclude the requirement to notify the Commission of the date of the proposed appointment and the date the appointment actually takes place which must be updated in the portal once known.

If this is your first online Form PQ and there has not been any changes since your last submission, 'First electronic PQ – no updates' should be selected. Any Form PQs received with this submission reason will be processed as low priority.

If you are completing the Form PQ to notify the Commission of a change/s since your last PQ/PD submission, 'I need to update the information in my existing PQ' should be selected.

Where an individual has completed a Form at the request of the Commission, this must be indicated.

It should be noted that the existence of an adverse record does **not** mean that the individual will automatically be assessed as being unfit and improper. Each case will be assessed on its merits. It is therefore in the individual's interest to provide full and frank details on the Form.

a) Offence

Parties who submit a Form PQ are reminded that it is an offence under the regulatory Laws to:

- (i) make a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular;
- (ii) dishonestly or otherwise, recklessly make a statement which is false, deceptive or misleading in a material particular;
- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular; or
- (iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly cause or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular.

It is also an offence under the regulatory Laws for a licensee to fail to provide to the Commission information in its possession knowing or having reasonable cause to believe that:

- (i) the information is relevant to the exercise by the Commission of its functions under the regulatory Laws in relation to the licensee; and
- (ii) the withholding of the information is likely to result in the Commission being misled as to any matter which is relevant to and of material significance to the exercise of those functions in relation to the licensee.

b) Information From Third Parties - Fitness & Propriety Verification

The Form subject must consider carefully the consent requirements of the Form PQ before submitting.

The Form PQs are not exhaustive of the matters that the Commission may need to consider when assessing whether a person is fit and proper. The Commission may, therefore, request further information from third parties, including current and former employers, professional associations, regulatory bodies and judicial bodies, in order to verify the information disclosed on the Form PQs. The Commission may seek to verify the information provided in a Form PQ including answers relating to an individual's fitness and propriety.

DEFINITIONS

The definitions in these Guidance Notes have been included for clarification purposes only. Where the definitions differ from those included within the regulatory Laws they are not intended to impose or imply separate or additional regulatory requirements. For regulatory definitions, please refer to the relevant regulatory Law.

For the purpose of these Guidance Notes, the terms:

“Prescribed Position” means director, controller, partner, manager, senior officer, significant shareholder, shareholder controller, indirect controller, general representative, beneficial owner of a financial services business, company secretary and such other positions as may be prescribed by regulations of the Commission.⁷

“director” means any person who occupies the position of director by whatever name called and, in relation to an unincorporated body, such as a partnership or branch office, any member of the committee or other similar governing body. Reference to “director” should be read as meaning senior management where the business is not a company.

“manager” means a person exercising managerial functions. For the avoidance of doubt, the term “manager” includes the positions of money laundering reporting officer, compliance officer and company secretary. Parties unclear as to whether the position in question would constitute a “manager” for the purpose of completing a Form PQ, should refer to the decision tree at the end of these Guidance Notes.

“regulatory Laws” means, collectively, The Banking Supervision (Bailiwick of Guernsey) Law, 1994, The Insurance (Bailiwick of Guernsey) Law, 2002, The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, The Protection of Investors (Bailiwick of Guernsey) Law, 1987, The Regulation of Fiduciaries, Administration Businesses and Company Directors etc. (Bailiwick of Guernsey), Law 2000 and The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008, all amended from time to time, and any other enactment or statutory instrument prescribed by the regulations of the Commission.

“The Rehabilitation of Offenders Law” means The Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002, as amended.

“The Rehabilitation of Offenders Ordinance” means The Law and the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 (Commencement, Exclusions and Exceptions) Ordinance, 2006, as amended.

“Relevant Spent Conviction” refers to any conviction of offences involving fraud, dishonesty or terrorist financing, under any enactment (whether or not of the Bailiwick) relating to banking or other financial services, building societies, investment business, companies, insider dealing, market abuse or manipulation, consumer credit, consumer protection, credit unions, friendly societies, industrial and provident societies, insurance, trusts and trusteeships, the regulation of fiduciaries, insolvency or money laundering, perjury, or of attempting or conspiring to pervert the course of justice, and some offences concerning taxation. A full list of exemptions can be found in The Rehabilitation of Offenders Ordinance.

⁷ Under The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008, as amended and The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, individuals holding positions that would otherwise fall within this definition, are only required to submit Forms at the request of the Commission.

Manager Decision-Tree

