

Explanatory Note regarding the surrender of the authorisation or registration of a collective investment scheme.

Under Section 11 of the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (“the POI Law”), the designated administrator or designated trustee/custodian of an authorised or registered Collective Investment Scheme (“CIS”) may surrender the scheme’s authorisation or registration by notice served upon the Commission. Such a surrender is not effective unless prior written consent to the surrender has been obtained from the Commission.

The Commission may refuse its consent to the surrender under various circumstances, including:

- Section 11(6)(a) - if, in the opinion of the Commission, the liabilities of the scheme have not been discharged or transferred, or
- Section 11(6)(b) - if the Commission believes that the surrender would not be in the interests of the public or the reputation of the Bailiwick as a finance centre.

The Commission will typically consent to a request to surrender the authorisation or registration of all types of CIS when it has received evidence that the liquidation or winding down of the CIS is fully complete and there are no residual or outstanding regulatory concerns.

Where a CIS has undergone a formal liquidation and that process is complete, a copy of the liquidator’s final statements should be included with any request to consent to the surrender of the scheme’s authorisation or registration, to demonstrate that the liquidation is complete. These should evidence that all assets have been sold, all liabilities settled, and remaining monies have been fully distributed to investors, and no contingent assets or contingent liabilities remain.

Where a CIS has not formally entered liquidation but has instead been subject to a managed wind down, and that process has been completed, a request to consent to the surrender of the authorisation or registration should be accompanied by a suitable declaration from the scheme’s designated administrator. Such declaration should confirm that all assets have been sold, all liabilities settled, and remaining monies have been fully distributed to investors, and no contingent assets or contingent liabilities remain. The Commission may seek further evidence to support such a declaration if considered necessary.

Notwithstanding the above “default” position, there are other circumstances under which the Commission will be prepared to consider (without prejudice to the outcome of that consideration) a request for consent to the surrender of a scheme’s authorisation or registration.

The Commission will exercise its discretion in consideration of such surrender requests having regard to the overarching objectives of protection of investors, protection of the reputation of the Bailiwick and protection of the interests of the public.

The following factors may be taken into consideration by the Commission in assessing a surrender request.

CIS constituted as Companies:

- If the scheme has entered into liquidation in non-contentious circumstances or if there is other evidence that the scheme is in an advanced state of managed wind-down.
- If the scheme is in good regulatory standing and has no outstanding regulatory obligations to the Commission (including for example, overdue periodic returns or fees) and there are no regulatory concerns.
- If the parties undertaking the liquidation or managed wind-down are considered to be in good standing and to have the appropriate relevant expertise.
- The nature of the scheme's investors.
- If the scheme no longer has the characteristics of a collective investment scheme.
- If, from the point of surrender, responsibility for Anti-Money Laundering / Countering the Financing of Terrorism / Countering Proliferation Financing ("AML/CFT/CPF") matters in respect of the (former) CIS and its shareholders / investors is assumed in writing by an appropriate person, be that a Prescribed Business ("PB") or licensed entity.

Where such a surrender request prior to the completion of the liquidation of a company scheme is contemplated and a PB will assume responsibility for AML/CFT then dialogue should first be entered into with the Commission to discuss how the AML/CFT/CPF requirements will be formalised. This will typically be achieved by means of the imposition of a voluntarily agreed condition on the registration (as a Prescribed Business) of the PB.

CIS constituted as Limited Partnerships:

- If the scheme has entered the dissolution process under Limited Partnership Law or there is other evidence that the scheme is in an advanced state of managed wind-down.
- If the scheme is in good regulatory standing and has no outstanding regulatory obligations to the Commission (including for example, overdue periodic returns or fees) and there are no regulatory concerns.
- If the designated administrator or general partner / licensed manager of the scheme has provided confirmation to the Commission that all liabilities of the scheme have been discharged where reasonably possible and there is a reasonable explanation for the retention of remaining assets (for example, illiquid assets or contingent claims).
- The nature of the scheme's investors.

- If the scheme no longer has the characteristics of a collective investment scheme.
- If the scheme's general partner (where it has become the liquidating trustee of the partnership or otherwise) retains a licence under the POI Law (or where relevant, has obtained a licence under the Fiduciaries Law) or, if it is not required to be licensed (including where a discretionary exemption from licensing has been issued), another POI Licensee (typically the designated administrator) assumes responsibility for AML/CFT/CPF matters in respect of the (former) CIS and its partners / investors.

Where such a surrender request prior to the completion of the winding down of a limited partnership scheme is contemplated, the relevant parties should first enter into dialogue with the Commission regarding the final bullet point noted above, to discuss how the AML/CFT/CPF requirements will be met. This will typically be achieved by means of agreement with the relevant licensee. Thereafter, any letter consenting to the surrender of the scheme's authorisation or registration will be drafted such that it is conditional upon that named licensee adopting the relevant AML/CFT/CPF responsibilities in respect of the residual structure and its investors.

Where it appears to the Commission that a surrender application will result in undue risk to investors then the Commission is unlikely to consent to surrender prior to completion of the liquidation process.

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