



Guernsey Financial
Services Commission

Guidance Note

Unclaimed Investor Money under the Protection of Investors (Bailiwick of Guernsey) Law, 2020



This guidance is not prescriptive in nature and the Commission would expect entities to fully consider their respective duties and responsibilities under the applicable Laws when compiling the Policy referred to in this guidance.

Definitions

The Commission considers the following meanings to be attributable to the following words which are included in this guidance:

“Unclaimed Investor Money” means “money, comprising income or capital distributable to its investors by a Scheme, which is unclaimed where either the rightful owner is known but contact has been lost or where the money is Blocked Investor Money;

“Blocked Investor Money” means investor money which remains unpaid because meaningful engagement with the investor can no longer be entered into or maintained, for example due to inadequate CDD documentation¹;

“Scheme” means a collective investment scheme authorised or registered under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (the “PoI Law”), with the exception of Private Investment Funds;

“Scheme Board” means the board of directors, general partner or other governing body of a Scheme;

“Policy” means a documented policy on Unclaimed Investor Money, approved by the Scheme Board;

“Responsible Entity” means the entity responsible for implementing the Policy.

Scope of this guidance

This guidance applies to collective investment schemes authorised and registered under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (the “PoI Law”), with the exception of Private Investor Funds².

This guidance does not apply to closed-ended Schemes or open-ended Schemes no longer accepting new subscriptions, already in operation at the time of the making of this guidance, but such schemes may choose to adopt the principles set out within this guidance where relevant.

Unclaimed Investor Money Policy

Schemes should have a documented policy (“the Policy”) on Unclaimed Investor Money,

¹ Blocked Investor Money does not include investor money which is subject to restraint or asset freezes under the Bailiwick’s legislation for detecting and preventing Money Laundering, Terrorist Financing and Proliferation Financing including sanctions legislation or to investor money which is subject to a “no consent” from the Financial Investigation Unit, which fall outside the scope of this Guidance.

² A Scheme registered as a Private Investment Fund under section 8 of the PoI Law and in accordance with the Private Investment Fund Rules, 2021.

approved by the Scheme Board. The Policy must take into account any applicable law and ensure that there are no contradictions between the provisions of the law and the Policy.

The Policy must cover, at a minimum, the following points:

1. Identification of the Responsible Entity

The Policy should identify the Responsible Entity. This should be decided by the Scheme Board in conjunction with the Designated Administrator prior to the launch of the Scheme.

The Responsible Entity should be a firm regulated under the Protection of Investors Law. The party acting as the Responsible Entity may change, for example if a Scheme changes its Designated Administrator. Where this occurs, it should be documented appropriately, in line with the process set out in the principal documents and communicated to all relevant parties.

2. Contact Policy and Applicable Timeframe

The Policy should prescribe a timeframe during which the Responsible Entity will make reasonable efforts to attempt to contact the investor(s) and/or rightful owner(s) of Unclaimed Investor Money after which it would be acceptable for the Responsible Entity to cease efforts to trace the investor and/or rightful owner. The timeframe should, at a minimum, take into account the value of the Unclaimed Investor Money, the type of Scheme, the type of investor, and any other relevant factors.

Notwithstanding the aforementioned factors to be considered, the Commission would generally consider *reasonable efforts* to include at a minimum, an attempt to contact the relevant investor(s) and/or rightful owner(s) once per year, whether that is a direct attempt using the latest contact details, or an indirect attempt by issuing a stock exchange announcement or other method of contact.

It is the Commission's expectation that efforts to contact the investor(s) and/or rightful owner(s) should not cease prior to six years after the first contact attempt.

3. Communication with Scheme Boards

The Policy should detail how the Scheme Board will be kept informed of Unclaimed Investor Money in relation to the Scheme and the frequency of such reporting. For example, this could be through the Designated Administrator's periodic reporting to the Scheme Board.

4. De Minimis Amounts

The reasonable efforts taken to contact and trace investors and/or rightful owners should be proportionate to the sum of the investment. The Policy may specify a *de minimis* amount per investor below which the Responsible Entity is not required to follow the Policy. In setting the *de minimis* amount, the Scheme Board may have regard to the nature of the Scheme's investors, with there being an expectation that a lower level would be set for a Scheme with retail investors.

The Scheme Board may also take into account the relative costs of attempting to contact

the investor in comparison with the value of the Unclaimed Investor Money.

5. Costs

The Policy should address how administrative costs relating to Unclaimed Investor Money, to the extent that these may not already be covered by standard administration fees, will be allocated, i.e. whether the costs will be charged to the Unclaimed Investor Money balance only or to the entire Scheme.

The Policy may provide for different treatment of costs in circumstances where proportionate exceptional efforts are made, for example the use of tracing agents where high values of Unclaimed Investor Money are involved.

Treatment of Unclaimed Investor Money after the *de minimis* period

It is for the Scheme Board and Responsible Entity to determine the appropriate treatment of the Unclaimed Investor Money after the *de minimis* period has ended. In making this determination, the following factors should be considered:

- the extent to which investor contact has been attempted, in line with
 - this guidance;
 - the reasonable expectations of investors, taking into account the Scheme's disclosure of its Unclaimed Investor Money policy;
 - the likelihood of future contact, to the extent that any determination of likelihood can be made;
 - whether the Unclaimed Investor Money could be returned if there is contact;
 - the materiality of the amount of Unclaimed Investor Money, taking into account the nature of the Scheme and its investors, and the relative cost of ongoing administration arrangements for Unclaimed Investor Money; and
 - the duties and obligations of the Scheme Board and the Responsible Entity under applicable Law.

Disclosure

A Scheme's Policy should be explained and disclosed to investors within the Scheme Particulars.

Blocked Investor Money

A Scheme's Unclaimed Investor Money policy should be designed in such a way as to ensure compliance with the Handbook on Countering Financial Crime and the relevant enactments defined in Schedule 3 to the Proceeds of Crime Law³. In so doing the treatment of Blocked Investor Money may differ from that of other forms of Unclaimed Investor Money.

³ The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999

Unclaimed Investor Money at end of Scheme life

A liquidator is responsible for Unclaimed Investor Money, whether held by a Scheme upon liquidation or arising during the liquidation process.

If a liquidator is appointed prior to the surrender of Scheme's registration or authorisation, the liquidator will be responsible for Unclaimed Investor Money from the date of its appointment.