

Managed Trust Company Relationships

November 2021

Definitions

In the context of this note the following terms apply:-

- a “managed trust company” means a licensee whose management, staffing, policies and procedures are provided by another licensed fiduciary, referred to as the “managing fiduciary”, to enable the managed trust company to meet the minimum licensing criteria set out in Schedule 1 of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law 2020 (“the Fiduciaries Law”). A managed trust company is licensed separately from the managing fiduciary under the Fiduciaries Law.
- a “managing fiduciary” means a licensee which provides management, staffing and policies and procedures to another separately licensed fiduciary, referred to as the managed trust company, which enable that managed trust company to meet the minimum licensing criteria set out in Schedule 1 of the Fiduciaries Law.

Introduction

This note has been produced to explain the regulatory requirements upon managing fiduciaries and managed trust companies. It is the Commission’s policy not to license new managed trust companies where the individual owners of the managed trust company would hold executive roles. Historically, prior to the introduction of this policy a significant factor in the majority of cases where problems have occurred within managed trust company relationships has been that the owner of the managed trust company has had an executive function.

Whilst the Commission has always required the managing fiduciary to make up at least the majority of the directors on the board of a managed trust company, this has in practice not necessarily given effective control to the managing fiduciary. This problem over control has emerged particularly when the owner of the managed trust company is the sole point of contact between the managed trust company and the principals behind the client structures for which the managed trust company is responsible, and that individual is not willing to allow the directors of the managing fiduciary to take full responsibility for the managed trust company’s relationships or the managing fiduciary is not willing to devote sufficient time to its role to achieve this.

Where new licences are granted to managed trust companies which meet this policy, specific conditions regarding control will be attached to the licence. The Commission is mindful that a managed trust company operation can be the first step towards a business establishing its own offices through the direct employment of directors and staff in the Bailiwick and the Commission may exercise some discretion in applying these licence conditions to such a managed trust company should circumstances allow.

Management

The managing fiduciary is required to retain a majority on the board of directors of the managed trust company and is expected to retain real executive control over the

operations of the managed trust company. The full board of the managing fiduciary, including those individual directors who do not sit on the board of the managed trust company, is responsible for the provision of services provided by the managing fiduciary to the managed trust company. Therefore if problems arise with a managed trust company, no director of the managing fiduciary can distance him/herself from these.

As fiduciary licensees, all managed trust companies must comply with the requirements of the Fiduciaries Law and with Schedule 3 to The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (“Schedule 3”) and the Commission Rules contained within the Handbook on Countering Financial Crime and Terrorist Financing (“the Handbook”). A managed trust company, as a separately licensed entity, is expected to meet the requirements set out in the Commission’s Code of Corporate Governance. To that end the Commission would expect regular meetings of the managed trust company’s board of directors to be held which cover the same areas of operation as the managing fiduciary’s board considers.

In addition, a managed trust company (like any other licensee) must be able to demonstrate that it complies with Paragraph 15 of Schedule 3 regarding periodic reviews of its compliance with Schedule 3 and with the Commission Rules contained in the Handbook.

The Commission would expect the management and administration services provided by the managing fiduciary to the managed trust company, including the provision that the managing fiduciary provides the majority of the managed trust company’s directors, to be set out in a management agreement between the two parties. Therefore those parties considering entering into a managed trust company relationship should contact the Commission at an early stage for details of those conditions which would need to be taken into account when structuring the operation and drafting the management agreement.

Anti-money laundering and compliance policies and operating procedures

The managing fiduciary is expected to operate the managed trust company in accordance with its policies and operating procedures and not under separate arrangements adopted solely for the managed trust company’s business as its own dedicated policies and operating procedures which are wholly distinct from the managing fiduciary’s policies and procedures. This means that whilst there may be some practical differences that need to be reflected in the procedures, for example that procedures may have to be tailored to a very specific target market of the managed trust company or a product it offers, the managing fiduciary’s policies and procedures relating to, for example, client take-on, client risk assessment and monitoring arrangements should apply generally to the managed trust company’s business.

The Commission would expect the managing fiduciary’s money laundering reporting officer (“MLRO”) and money laundering compliance officer (“MLCO”) to be appointed as the managed trust company’s MLRO and MLCO respectively.

All records relating to the managed trust company and its business must be maintained by the managing fiduciary in the Bailiwick of Guernsey. Where the owner of a managed trust company (or another principal connected with the managed trust company or an employee of the managed trust company’s parent) has contact with the

managed trust company's clients, the managing fiduciary should ensure that it is in receipt of all information such as records relating to the rationale for establishing the structure, and records relating to communications between that individual and the managed trust company's clients, to enable the managed trust company to comply with AML requirements and to fulfil its fiduciary duties.

Resourcing

A managed trust company should not directly employ its own staff, such as the MLRO and MLCO, as it is licensed on the basis that staff are provided by the managing fiduciary, unless the Commission has agreed otherwise.

The Commission would expect the managing fiduciary to ensure that it has sufficient staff resources to properly manage and administer not only the managed trust company but also its own fiduciary business.

The Commission should be advised where there are proposals to outsource administrative services to another party including to a company in the same group as the managed trust company. As such proposals may mean that the managing fiduciary's operating procedures will not apply over all administrative areas, arrangements to be made by the managing fiduciary to oversee and closely monitor any outsourced functions should accompany the outsourcing proposals submitted to the Commission.

Termination of services

In accordance with Rule 5.2 of the Fiduciary Rules and Guidance, 2021 the Commission would expect to be notified by the managed trust company where notice to terminate the management agreement has been given by either the managing fiduciary or the managed trust company.

Supervision

Managed trust companies are subject to the same licensing and supervisory framework as other holders of fiduciary licences including onsite visits. Managed trust companies are expected to be adequately capitalised in their own right and have sufficient insurance cover which meets the requirements in the Fiduciary Rules and Guidance, 2021. Managed trust companies are included in the scope of the Commission's risk-based supervisory model, PRISM.

Managing fiduciaries are expected to have raised all of these requirements in preliminary discussions with parties seeking to utilise their services as a managing fiduciary and to have carried out their own due diligence on the principals behind the proposed managed trust company including, but not limited to, the viability of the proposed business, the proposed operating model and the risks involved.