

Licensing under the POI Law

Service area / [Investment Funds](#)

Location / [Guernsey](#)

Date / [January 2019](#)

The POI Law requires anyone who carries on “controlled investment business” in or from within the Bailiwick of Guernsey to hold a licence issued by the GFSC under the POI Law (a “POI Licence”; a “POI Licensee”).

“Controlled investment business”

Carrying on controlled investment business involves three elements:

- engaging in a “restricted activity”; which is
- in connection with a “controlled investment”; and which is done
- by way of business.

Restricted activities, listed at Schedule 2 of the POI Law, are promotion, subscription, registration, dealing, management, administration, advising and custody^{1,2}.

Controlled investments are listed in Schedule 1 of the POI Law, which includes collective investment schemes, general securities and derivatives.

“By way of business” is not defined but an element of payment or compensation above de minimis levels is normally required.

Who needs a POI Licence in respect of a Guernsey fund?

Given the above criteria, most activities performed by service providers in Guernsey to Guernsey funds will usually require a POI Licence. In particular:

- The administrator. The POI Law and the various rules governing Guernsey funds require a body corporate, Guernsey domiciled POI Licensee as the “designated manager” or “designated administrator” (for simplicity, the term we have used throughout these materials is “administrator”).
- The custodian. For open-ended funds, and subject to limited exemptions for PIFs and hedge funds, the POI Law and the various rules governing Guernsey funds require a body corporate, Guernsey domiciled POI Licensee as the “designated custodian” or “designated trustee”.
- The manager.
- The general partner.
- The trustee.

¹ Note A to Schedule 2 specifies that party A is performing a restricted activity where he contracts with party B for party B to perform a restricted activity.

² Note C to Schedule 2 exclude joint enterprises and activities between group entities from being restricted activities.

OFFSHORE LAW SPECIALISTS

Who doesn't need a POI Licence in respect of a Guernsey fund?

- Any service provider to a Guernsey fund which is not incorporated in Guernsey and which is not carrying on regulated business in Guernsey. This typically includes foreign investment managers and investment advisers. Although they may be providing restricted activities to a controlled investment, they are not providing it in or from within the Bailiwick of Guernsey.
- Individuals. The POI Law provides for the licensing of entities, not individuals. The directors of the fund, the general partner, the manager etc. are therefore not licensed.

The application process

The GFSC may grant or refuse an application at its discretion and, in considering whether or not to grant a licence, the GFSC is required to have regard to the need to protect the public and the reputation of the Bailiwick as a financial centre. Among the matters which the GFSC must take into account in reaching a decision are whether the applicant is a fit and proper person to carry on the business proposed and the manner in which it is proposed to organise the carrying on of the business to which the application relates.

The GFSC has power to impose conditions on a licensee either on the granting of a licence or at any time after its issue and also to cancel or suspend a licence in certain specified circumstances.

POI application

Each applicant is required to have adequate resources of personnel, policy, procedures, premises and systems to conduct operations including:

- record-keeping;
- compliance;
- anti-money laundering measures; and
- internal control and other systems.

If the applicant proposes to delegate some responsibilities to other service providers, the arrangements must be acceptable to the Commission and demonstrate that the delegate has the necessary capability.

Each applicant must also meet the capital requirements specified by the Licensees (Capital Adequacy) Rules 2010.

An application is made by submitting an investment licence application pack to the GFSC, containing:

- an application "Form RA/1";
- a business plan showing the applicant's proposed business activities;
- a three-year budgeted balance sheet and profit and loss account;
- documentary evidence relating to the beneficial ownership of the applicant;
- copies of any agreements whereby management of the applicant has been delegated;
- evidence of the incorporation or establishment of the applicant;
- evidence of appropriate director's and officer's insurance cover;
- evidence of an auditor's willingness to act;
- a business risk assessment;
- financial statements of the applicant (if applicable);
- documentary evidence as to the share capital of the applicant;
- a letter from a director confirming that the capital requirements specified by the Licensees (Capital Adequacy) Rules 2010 are satisfied; and
- the application fee (currently £2,322).

An online personal questionnaire must be submitted through the GFSC's "Online PQ Portal" for each natural person who is a beneficial owner, controller, partner, director, company secretary, Money Laundering Reporting Officer, Compliance Officer or manager of the applicant.

Upon receipt, the GFSC will assess and review the application pack and inform the applicant, or its professional advisers, of any matters requiring expansion or clarification.

The GFSC aims to respond to applicants within 28 business days of receipt of a fully completed application pack. A "Fast Track Licence" ("FTL") can be issued within an accelerated timescale (10 business days) for parties seeking to provide management services to Qualifying Investor Funds or registered funds. The intention of the FTL regime is to enable a fund application and a POI Licence application to be submitted for simultaneous consideration by the GFSC.

The GFSC will also accept POI Licence applications under the FTL regime in advance of a fund application for Guernsey managers needing to meet the requirements of the EU National Private Placing Regime. In such circumstances, the licence application pack must also include details about the fund's investment objectives, investment strategy, asset classes, target investors and geographical marketing sector.



FIND US

Carey Olsen (Guernsey) LLP
PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272

E guernsey@careyolsen.com



FOLLOW US

Visit our investment funds team
at careyolsen.com



PLEASE NOTE

Please note that this briefing is only intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such.

© Carey Olsen (Guernsey) LLP
2019