

Bellerive

Guidance for Clients on Guernsey Due Diligence Requirements

Bellerive Trust Limited (“BTL”) is regulated by the Guernsey Financial Services Commission (“GFSC”) and subject to the laws and standards imposed in the jurisdiction. The GFSC is committed to maintaining appropriate and effective standards of regulatory supervision within Guernsey in order to protect its international reputation as a financial centre. Guernsey is subject to regular visits from the IMF and Moneyval to assess its anti-money laundering and countering the financing of terrorism (“AML/CFT”) measures. As a result of these visits recommendations are made, and the AML/CFT framework is constantly evolving.

It should be noted that regulatory action was taken by the GFSC in April 2018 against a Fiduciary Business which did not meet the standard set out in this guidance. A summary of extracts of the relevant parts of the regulatory statement is set out in Appendix A.

As a responsible business BTL is committed to playing its part in the international fight against financial crime and the financing of terrorism. It is unfortunate that in order to do this our clients may be inconvenienced, and this information sheet is intended to provide the reasons for compliance with the rules. It should be noted that the standards adopted by Guernsey and BTL are in line with most respectable financial centres.

There are also requirements for the regular review of all relationships, and that should the due diligence be found to no longer meet current standards it should be updated. This does mean that BTL must on occasions approach long-standing and trusted clients for information which was not required when the relationship was established, or for documentation to verify information which we believe to be accurate, but for which we do not have verification.

BTL is required to take reasonable measures to establish any source of funds and the wealth of a customer, beneficial owner and any underlying principal. The extent of enquiry and the level of evidence obtained should ascertain the source of the funds and how they were generated. Source of wealth covers how the client obtained or generated their wealth, while source of funds is determining where a specific transfer of funds came from, and whether that source is legitimate. Ascertaining the legitimacy of the monies is achieved through evidencing responses from customers to enquiries about their source of funds and wealth.

BTL must for every new relationship build a profile of the client, and the proposed activities. These must be verified using external data sources wherever possible, and be fully documented. We must understand why Guernsey, and why BTL, have been chosen as the service provider, and understand if there are any tax planning motives. BTL requires that all clients have considered their tax position, and we may require to view copies of external professional tax advice should we have any concerns as to the arrangements.

Source of wealth is usually carried out on the commencement of a business arrangement, and involves establishing and evidencing how the client came about their wealth. It is no longer acceptable to our Regulator for a simple statement of “inheritance” or “sale of business”, and in those situations we would be obliged to obtain details of from whom the inheritance was received or the business sold, dates and confirmations from the executor or contracts of sale. We need to establish the beneficial owner’s total net worth, including but not limited to the assets held with BTL. This will normally take the form of a schedule

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of assets. The net asset value should be consistent with the beneficial owner's lifetime financial activity, with any discrepancies explained. We are also obliged to retrospectively review the records of long standing clients to ensure that they are brought up to current standards.

Understanding the source of a customer's funds is an on-going requirement and applies to all new funds passing through the relationship. This now goes beyond establishing the financial institution from which the funds were transferred, and we must now document all further funds introduced and assess if they comply with the original source of funds at set up, and are consistent with the source of wealth and profile of the client. Additional supporting documentation may be requested.

We must carry out monitoring to assess on an ongoing basis whether the transactional activity of that relationship is consistent with the risk profile of that customer, including their source of wealth.

Your relationship manager is required to understand and document the rationale and legitimacy of all transactions passing over your account, in order to enable them to identify any possible fraud attempts against our clients, or any potential misuse of the financial system for illegitimate purposes. We appreciate your assistance in assisting us in this important task.

Appendix A

GFSC Statement regarding a Fiduciary Business ("the Licensee")

On 12 April 2018 the Guernsey Financial Services Commission ("the Commission") decided:

- To impose a financial penalty of £45,500 under section 11D of the Financial Services Commission Law on the Licensee; and
- To make this public statement under section 11C of the Financial Services Commission Law.

The Commission considered it reasonable and necessary to make these decisions having concluded that the Licensee had failed to ensure compliance with the Regulations, the Handbook, the Code of Practice - Corporate Service Providers, the Code of Practice - Trust Service Providers, Instruction 6 of 2009 and the minimum criteria for licensing set out in Schedule 1 of the Fiduciaries Law.

The Commission identified serious instances of governance and operational failings as well as failings in respect of the Licensee's compliance with applicable Anti Money Laundering/ Countering the Financing of Terrorism related regulations.

These concerns fell broadly into the following categories:

1. The Licensee did not always properly verify its underlying customers or identify the risks they posed, in particular regarding high-risk customers, operating high-risk businesses in high-risk countries;
2. The Licensee did not always properly verify the source of wealth and/or the source of funds of its high-risk customers;

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3. The Licensee did not always adequately monitor customer relationships and, on occasion, failed to address in a timely manner serious issues that arose during periodic relationship risk reviews;
4. The Licensee failed to maintain adequate records of all its customers;
5. The Licensee failed to comply fully with Instruction 6 of 2009;
6. The Licensee had been warned about the above issues on a number of occasions prior to 2016. Many of the issues were repeat issues noted from an on-site visit carried out by the Commission in June 2013 onwards, but the Licensee had, in a number of instances, failed to effectively address these shortcomings until undertaking an extensive remediation programme in 2016; and
7. The Licensee failed to comply fully with the minimum criteria for licensing under the Fiduciaries Law.

FINDINGS

The Commission's investigation found:

The Licensee did not always properly verify its customers.

The Licensee failed on a number of occasions to verify from the outset of a business relationship the identity of all parties involved; including relationships involving high-risk business, and politically exposed persons (PEPs). In the case of one high-risk relationship, both verification of identity and verification of address was outstanding for a period of nearly seven years.

The Licensee placed undue reliance upon formally documented site visits by its senior staff in order to verify high-risk customers' addresses, without obtaining additional documentation in respect of the relevant addresses.

The Licensee did not always properly identify and verify the source of wealth and/or the source of funds of its high-risk customers.

The Licensee was noted on a number of occasions to have entered into business relationships with customers operating high-risk businesses. In some cases the Licensee placed undue reliance on the assertions being made by customers regarding the source of their wealth or funds, without obtaining supplemental documentary information to support these claims.

The Licensee did not always adequately monitor customer relationships and failed to address in a timely manner all serious issues that arose during periodic relationship risk reviews

The Licensee had amongst its business relationships customers who operated companies whose business activities related to mining or were involved in property dealing. The Commission noted that in relation to these customers the Licensee:

- had not, in a timely manner, been made aware of a change in the shareholding of a foreign company which

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owned a company that was administered by the Licensee and which was involved in mining-related activities. The Licensee failed to adequately document its scrutiny of why the client had failed to notify it of this serious omission.

- had failed to complete financial statements for a company involved in property dealing in the Middle East for nearly ten years; which was exacerbated by the Licensee's inability to properly identify whether any of these properties had been sold; and
- had failed to maintain contact with a high-risk customer, which resulted in the Licensee being unable to resolve outstanding regulatory issues.

Furthermore, the Licensee was noted in periodic risk reviews to have failed, in some cases, to resolve in a timely manner serious issues that arose during the life of a business relationship. In one instance involving a high-risk customer, action points regarding customer due diligence ("CDD") were not resolved by the Licensee and were therefore carried forward to the next review, year after year, for a period of nearly seven years.

The Licensee failed to maintain adequate records of all its customers.

The Licensee was noted to have kept inadequate records of many of the customers reviewed by the Commission and as such was unable to perform meaningful periodic risk assessments in respect of those customers.

The Licensee failed to comply fully with Instruction 6 of 2009