

### **Introduction**

The IMF have recommended that the Commission should collect and publish statistics on assets held by trusts and companies serviced by the Guernsey fiduciary sector to facilitate a better understanding of the sector.

The Commission is responding to this by calling for additional data regarding assets under trusteeship to be included on the annual returns of licensed fiduciaries. At the Commission's request, GAT has worked with the Commission in arriving at the approach which has been adopted and in drawing up these guidance notes.

This guidance applies to all licensed fiduciaries, i.e. both corporate and personal fiduciary licence holders, who must complete their 2011 Annual Fiduciary Returns for the year to 30<sup>th</sup> June 2011 and in so doing must complete the questions on assets held by the entities they service as fiduciaries.

### **Terminology and approach**

The term "assets under trusteeship" is deliberate. Confusions can arise when using terms such as "assets under administration" or "assets under management" because degrees of administration vary from asset to asset and some assets are administered in a variety of different ways by numerous different organisations in various parts of the world, and some fiduciaries administer assets where they do not act as trustee or director. "Assets under trusteeship" is a term that carries more certainty and more relevance in that a trustee, whether administering trust assets directly or not, remains responsible for their proper administration. Accordingly it is expected that more reliable data will result from use of this terminology. Assets held by fiduciaries when conducting regulated activities are included in the scope of this exercise, including, for example, standalone companies and foundations and the term "Assets under Trusteeship" is to be interpreted accordingly.

For personal licensees data should be included for all regulated activities carried on under the scope of a personal fiduciary licence. All licensees should exclude those activities which fall within the statutory exemptions set out under section 3(1) of The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000.

The statistics being sought are to enable a better understanding of the sector. Because assets under trusteeship encompass an extremely wide and diverse range of asset types it is recognised that the exercise cannot, and should not, attempt to arrive at an overall *value* of assets under trusteeship in Guernsey. In practice, because some assets are not capable of being valued reliably, this would be impossible to achieve and any attempt to do so would be likely to give a misleading impression, rather than a better understanding, of the sector.

The approach arrived at after full discussion between GAT and the Commission, is to report on assets under five different categories. Presentation of the data under different categories will enable whoever eventually reads the data to interpret it by reference to fundamentally different asset types and this is intended to enhance the reader's understanding of the sector. It is also intended to steer users of the data away from the temptation to treat the data as a league table of success, such as happens with bank deposits and investment funds.

Only one of the categories is expected to be reported at fair values. This is the first category, "liquid or near liquid assets". The other categories are to be reported at the amounts they are stated in the trustees' books. The reason for this is twofold. One, the burden imposed on

trustees by a requirement to have all assets under trusteeship valued each year would be intolerable and hugely expensive. Two, the difficulty, or impossibility, in valuing some asset types would introduce an unacceptable level of unreliability into the data.

### ***General methodology***

Licensees are asked to include assets at the amounts shown in the financial records of the entity concerned. Liabilities are to be excluded and there is no requirement to have assets valued or otherwise assessed for the purposes of this exercise, save for an expectation that liquid or near liquid assets will be stated at fair (i.e. market) values, each year. It is acknowledged that the disciplines exercised by trustees in the routine preparation of the annual financial statements of their client trusts and companies will give rise to adequate data for the purposes of this exercise.

Where trusteeship is shared with other licensees in Guernsey the assets should be returned by only one of the Guernsey licensees (to be agreed between them which one) or counted in proportion to the number of Guernsey licensed trustees but where trusteeship is shared with non Guernsey trustees, the assets should be counted in full. This approach guards against double counting of assets under the trusteeship of more than one Guernsey trustee, whilst recognising the full degree of responsibility for, and therefore full counting of, the assets held by trustees even where the trusteeship is shared with one or more non-Guernsey trustees.

### ***Five categories of data***

The Commission is aware that in assessing assets under trusteeship, trustees will be faced with judgement calls. The purpose of this guidance is to assist trustees to respond in a way that is practical, consistent and meaningful.

Five basic categories of asset have been provided for in the return, in order to assist with interpretation of the data. Clearly some asset categories are relatively easy to assess, whilst other categories are more difficult, and by requesting the analysis of the data over these five categories, the Commission hopes both to make completion of the return easier for licensees and to achieve a better quality of data leading to more accurate interpretation thereof.

### ***Scope of the data***

The data requested is to include all assets under trusteeship. Assets held via underlying companies (or other structures) should be included as assets under trusteeship, and so the underlying companies themselves should be looked through. Where assets are less than 100% owned, ultimately, by the trustee, an appropriate apportionment should be made as far as is reasonably practical.

The degree to which underlying companies should be looked through requires a judgement call. A typical asset holding vehicle is to be looked through, whilst a company with independent directors which the trustee owns but is not engaged in the day to day functions of (the typical family trading company for example) would be treated as an asset in its own right, even if the trustees are represented by a place on the board of that company. In most cases the distinction will be immediately apparent and licensees are asked to make a common sense judgement regarding borderline cases.

Assets held under bare trust arrangements (typically nominee shareholdings) for individuals or other parties (with no other trust arrangement in place) should still be included as assets under trusteeship.

### ***Category 1: Liquid or near liquid assets***

This should be the easiest category to assess.

Marketable securities should be included at market values according to the financial records of the entity concerned.

If real estate is held via a marketable fund or company it should be included in Category 1.

***Category 2: Real Estate***

It is acknowledged that real estate may be stated in the balance sheet at cost, at a valuation made some years ago or at a recent valuation. Occasionally real estate may be stated at a nominal value, where, for example, it was settled on the trustees. Licensees are urged to take a pragmatic view. The Commission does not expect licensees to incur any costs whatsoever in terms of valuing assets.

***Category 3: Private company shares and other trading assets***

This category is intended for the typical “family company” type of trust asset and for traded assets such as merchant shipping stock, aircraft for commercial lease or charter, hotels (where not already included under real estate) and so on. It is acknowledged that valuing such assets can be difficult and that in some cases such assets (particularly private company shares) may be stated at nominal amounts whilst in other cases such assets may be stated at fair values which may, sometimes, be very substantial.

These assets should be reported at the amounts stated in the accounting records.

Where trustees hold private equity assets of any sort which would not pass as “near liquid” assets, they should be included in this category.

***Category 4: Works of Art, Antiques etc***

These assets should be reported at the amounts stated in the records of the entity concerned.

***Category 5: Other diverse assets***

Trustees often hold a diverse range of asset types which are not held for investment or re-sale. Such assets should be included in this category and would include private yachts and other pleasure craft and private aircraft plus other assets that cannot be categorised elsewhere.

Once again these assets should be reported at the amounts stated in the financial records.

As a general note, assets can be stated by reference to the latest financial statements, where available.