GUIDE

Investment funds in Guernsey

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1 Introduction

This guide provides a concise outline of the regulation of investment funds in Guernsey, an overview of the structures available and their tax treatment.

2 Regulation of investment funds

The Guernsey Financial Services Commission (the **GFSC**) regulates investment funds to protect investors and to maintain the Island's reputation. Guernsey has established a sophisticated infrastructure to foster the establishment of investment funds. The criteria for granting an authorisation or registration to a fund and the manner in which that fund will be regulated largely depends on whether the fund is open- or closed-ended and the type of investor targeted. The GFSC also regulates the licensing of fund service providers in Guernsey.

The GFSC regulates the formation and operation of investment funds in Guernsey pursuant to the Protection of Investors (Bailiwick of Guernsey) Law, 2020, as amended (the **POI Law**), together with rules and regulations made thereunder. In granting authorisation or registration, the GFSC will consider the status, reputation and track record of the promoter, the scope of the fund's investment activities and the nature of its business. It will also consider the protection and/or enhancement of Guernsey's reputation as a financial centre.

Funds may be open- or closed-ended and seek authorisation or registration under one of four routes:

- Authorised Fund by standard application
- Authorised Fund by Qualifying Investor (**QIF**) application
- Registered Fund application, and
- Private Investment Fund application.

The distinction between open- and closed-ended funds is based on redemptions: open-ended funds allow investors to have their holdings redeemed or repurchased on demand, subject to any applicable notice period and at a price related to the value of the underlying property or assets, whereas closed-ended funds do not – redemptions (if any) are discretionary.

There is no requirement for a Guernsey investment manager, and a fund may be self-managed, but all Guernsey funds must have a local administrator (a **designated administrator**) to conduct the day-to-day administration. Open-ended funds must also have a Guernsey-based custodian to undertake custodial duties and perform oversight of the designated administrator (unless a derogation is obtained from the GFSC).

An application fee is payable on submission of the fund application and an annual authorisation fee is payable on receipt of final authorisation or registration (as the case may be).

3 New promoters

Where the promoter and principals of a fund are not already known to the GFSC, they must submit a new promoter introductory checklist which gives information on their track record, the proposed investment business to be undertaken in Guernsey and personal information on the directors, managers and shareholders of the promoter, the shareholders and directors of any management company and the directors of the proposed fund.

4 Authorised Funds (by standard application)

The standard application for authorisation of an open- or closed-ended fund in Guernsey is a three-stage process, comprising outline, interim and formal authorisation.

Open-ended authorised funds can be structured as one of the following which, to a large extent, will determine the applicable level of regulation:

- **Class A funds** which are regulated under the Authorised Collective Investment Schemes (Class A) Rules 2002 or the Authorised Collective Investment Schemes (Class A) Rules 2008 (the **Class A Rules**).
- **Class B funds** which are regulated under the Authorised Collective Investment Schemes (Class B) Rules and Guidance 2021 (the **Class B Rules**) and allow greater flexibility in investment and borrowing powers. Class B funds vary in scope from retail funds through to strictly private funds established as

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vehicles for a single institution but have historically been targeted at institutional investors and high net worth individuals. Certain derogations from the Class B Rules are available on application to the GFSC.

- **Class Q funds** which are regulated under the Collective Investment Schemes (Qualifying Professional Investors Funds) (Class Q) Rules and Guidance 2021 (the **Class Q Rules**), are restricted to professional investors and allow the investment manager an even greater degree of flexibility.

Closed-ended authorised funds are regulated under the Authorised Closed-Ended Investment Schemes Rules and Guidance 2021 (the **Closed-Ended Rules**) which set out the duties of the administrator and custodian (if any), requisite disclosures to be made in the prospectus, and the requirements to notify the GFSC in respect of changes to the fund or its service providers.

Where a local fund manager is used in the structure of an Authorised Fund, it must apply for a licence to conduct restricted activities under the POI Law, the approval process for which typically takes four to six weeks.

5 Authorised Funds (by QIF application)

Promoters of Authorised Funds, which will be offered to professional or experienced investors or knowledgeable employees (**qualifying investors**), may take advantage of the **Qualifying Investor Fund** (or **QIF)** fast-track application process. An appropriately licensed Guernsey administrator must certify to the GFSC that it has performed sufficient due diligence on the promoter, that it has effective procedures in place to ensure restriction of the fund to qualifying investors and that the requisite disclosures are made in the fund's offering document. By placing much of the onus of due diligence on the designated administrator, the GFSC has been able to significantly reduce its period for processing such applications. The GFSC has a guaranteed response time of three business days following receipt of all requisite documentation and the designated administrator's certification.

The QIF regime is complemented by a fast-track process for consideration of any local fund manager's licence application. A local fund manager is not legally required, but where the fund structure includes a Guernsey fund manager or the fund is structured as a limited partnership and has a Guernsey general partner, the GFSC will process the application for the licence of such entity (again with reliance on the designated administrator's certification) under the fast-track licensee application process within 10 business days.

Open-ended QIFs are subject to the Class A, Class B or Class Q Rules and the Qualifying Investor Funds Guidance dated November 2021 (**QIF Guidance**) published by the GFSC. Closed-ended QIFs are subject to the Closed-Ended Rules and the QIF Guidance.

6 Registered Funds

Guernsey's Registered Fund regime provides a lighter regulatory touch and a fast-track process to obtain registration from the GFSC. As with QIF applications, the GFSC's reliance on the designated administrator's certification of due diligence on the promoter and that the requisite disclosures are made in the fund's offering document reduces the GFSC's response time to three business days.

The Registered Fund regime is also complemented by a fast-track process for consideration of a licence application for a local fund manager (if any). Where the fund structure includes a fund manager or the fund is structured as a limited partnership and has a Guernsey general partner, the GFSC will process the application (again with reliance on the designated administrator's certification) under the fast-track licensee application process within 10 business days.

Registered Funds, whether open- or closed-ended, are subject to the Registered Collective Investment Scheme Rules and Guidance 2021 (the **Registered Rules**), which set out such matters as administration and custodian duties (the latter being optional for closed-ended funds), prospectus disclosures and the notification requirements to the GFSC in respect of changes to the fund or its service providers, and the Prospectus Rules and Guidance 2021 (the **Prospectus Rules**), which set out information for inclusion in the prospectus of any Registered Fund.

7 Private Investment Funds

The Private Investment Fund (**PIF**) regime provides fund managers with more flexibility and a greater choice of fund products.

The PIF, which was developed in response to market demand, recognises that certain investment funds are characterised by a relationship between management and investors that is closer than that of a typical agent. The PIF dispenses with the formal requirement for information particulars such as a prospectus in recognition of that relationship, significantly reducing the cost and processing time of launching of a fund.

PIFs, which can be either open- or closed-ended and are subject to the Private Investment Fund Rules and Guidance (2) 2021 (the **PIF Rules**), should contain no more than 50 legal or natural persons holding an economic interest in the fund. There are three routes to establishing a PIF in Guernsey: Route 1 (licensed manager), Route 2 (qualifying private investor) and Route 3 (family relationship). A key strength of the product is that, pursuant to Route 1, where an appropriate agent is acting for a wider group of stakeholders such as a discretionary investment manager or a trustee or manager of an occupational pension scheme, that agent may be considered as one investor.

The key features of the PIF regime are set out in our legal guide: 'The Guernsey Private Investment Fund'.

8 Guernsey Green Funds

Guernsey's Sustainable Funds Framework is the umbrella under which the regulatory structures for environmentally friendly and sustainable funds sit. There are currently two types of sustainable funds available under that framework, namely the Guernsey Green Fund and the Natural Capital Fund.

The Guernsey Green Fund has the objective of seeking a return for investors while mitigating environmental damage. Investors are able to rely on the fund's designation as a Guernsey Green Fund, provided through compliance with the Guernsey Green Fund Rules and Guidance 2021 (the **Green Fund Rules**), to represent a fund that meets strict eligibility criteria of green investing and which has the objective of a net positive outcome on the planet's environment.

Under the Green Fund Rules, 75 per cent of a fund's assets, by value, must meet specified green criteria. Permitted investment areas include renewable energy, efficient energy generation, energy efficiency, agriculture, waste and wastewater and transport. The Green Fund Rules use internationally recognised sets of green criteria, namely the Common Principles for Climate Mitigation Finance Tracking (version 2) and the European Taxonomy for Sustainable Activities.

Any class of fund can be designated as a Guernsey Green Fund, whether registered or authorised open- or closed-ended.

9 Natural Capital Funds

The Natural Capital Fund is the second offering in Guernsey's Sustainable Funds Framework, complementing the Guernsey Green Fund. Together, they are designed to provide Guernsey funds with a suite of sustainability designations based on international standards.

The Natural Capital Fund regime has a broader more nature-focussed scope than the Guernsey Green Fund, its focus being centred on climate change mitigation and adaptation. The extent of the Natural Capital Fund regime includes funds which, through their activities, commit to significantly reducing environmental harm to nature as well as those which aim to contribute positively.

To be eligible for the Natural Capital Fund designation, the objectives of the fund must align with either:

- the targets set out in the United Nations Convention on Biological Diversity's Kunming-Montreal Global Biodiversity Framework
- the United Nations' Sustainable Development Goals 12-15 or
- the EU Taxonomy for Sustainable Activities' Environmental Objectives (c) to (f).

These frameworks incorporate the immense variety of natural capital and provide a comprehensive understanding of what strategies and goals are necessary to abate natural capital loss affording a Natural Capital Fund the flexibility to adopt the sections of the frameworks relevant to its specific investment focus and strategy, while operating in line with internationally recognised standards.

Any class of fund can be designated as a Natural Capital Fund, whether registered or authorised open- or closed-ended and are subject to the Natural Capital Fund Rules and Guidance 2022.

10 Structures available

Funds in Guernsey can be structured as companies with limited liability, protected cell or incorporated cell companies, unit trusts or limited partnerships.

Companies

All Guernsey companies, whether cellular or non-cellular, are incorporated under the Companies (Guernsey) Law, 2008, as amended (the **Companies Law**) and are subject to that law and to their memorandum and articles of incorporation. Companies may elect a stated or unstated share capital and par or no-par value shares.

Protected Cell Companies (PCCs)

In a PCC, assets are segregated into cellular and non-cellular assets and held in individually created cells or the core respectively. The assets of each individual cell include the share capital and reserves (including retained earnings, capital reserves and share premiums) attributable to that cell. The non-cellular assets are, in effect, the general assets of the company. Importantly, the assets of each individual cell are only available to the creditors of that particular cell.

The segregation of assets and liabilities in one legal entity readily lends PCCs to be used for guaranteed or protected products.

Incorporated Cell Companies (ICCs)

An ICC is similar to a PCC, but in an ICC each individual cell is an incorporated company with separate legal personality. The incorporated cells are not subsidiaries of the ICC and cannot bind the ICC but must contract in their own individual names. Each incorporated cell must have at least one director that is also a director of the ICC.

Unit Trusts

A unit trust is constituted by an instrument of trust, usually between the manager and the trustee (or in certain circumstances made by a managing trustee only) and is subject to the Trusts (Guernsey) Law, 2007, as amended. A unit trust is not a separate legal entity in itself but is based on the concept of a trustee who has legal title to the assets and who holds them on trust for the benefit of the unit holders. There is no capital duty on the establishment of a unit trust and no annual registration fee. A unit trust may obtain exemption from Guernsey tax on all income except income arising in Guernsey (other than bank interest). Distributions to unit holders are not subject to Guernsey tax unless the unit holder is Guernsey resident.

Limited Partnerships

The Limited Partnerships (Guernsey) Law, 1995, as amended provides an enabling framework for the establishment and operation of Guernsey limited partnerships. A Guernsey limited partnership is not a legal entity in its own right (unless it elects to have legal personality), but is a partnership managed by a general partner, the limited partners of which are not liable over and above the amounts which they have agreed to contribute to the partnership. There is no limitation on the number of limited partners and the general partner will ordinarily have unlimited liability for the debts of the partnership.

Profits and losses of a partnership are attributed to the partners according to their proportionate share. A partner who is not resident in Guernsey will not be liable to any Guernsey income tax except to the extent that any part of that share is derived from Guernsey source income (other than bank interest) which includes profits from a trade carried on in Guernsey but excludes profits from international activities carried on outside of Guernsey.

Limited partnerships are a popular vehicle in the constitution of private equity funds.

11 Taxation of funds

The rate of corporation tax for companies registered in Guernsey is zero per cent. It is possible for open- and closed-ended funds (whether constituted as a company, a unit trust or a limited partnership) and their wholly owned subsidiaries to apply to the Director of Revenue Services for exempt status which grants exemption from tax on all income save for any income arising in Guernsey (other than Guernsey bank interest). The annual fee for exempt status is currently £1,600.

There are no Guernsey withholding taxes on dividends other than those paid to Guernsey resident shareholders and there is no Guernsey capital gains tax.

12 Listing

The shares, units or interests of Guernsey investment funds may be listed on stock exchanges, but QIFs must have a mechanism to remove investors admitted via an exchange who do not fall within the 'qualifying investor' definition.

Guernsey has proven to be a popular choice of jurisdiction in which to establish funds that are to be listed on stock exchanges. Please refer to our legal guide on 'Guernsey Listed Funds'.

13 Circulation of a prospectus

The Prospectus Rules apply to regulate the content of the prospectus of a Registered Fund and also to any offer of general securities or derivatives either made by a Guernsey entity (company, limited partnership or unit trust) or made to the public in the Bailiwick of Guernsey (the **Bailiwick**) wherever the offeror is domiciled. The 'public' is defined in the POI Law as an identifiable category of persons not exceeding 50 in number.

The Prospectus Rules do not apply to:

- a Private Investment Fund
- any offer of investments which are listed or traded on any exchange in respect of a company, limited partnership or unit trust registered or incorporated in a country or territory in which the local regulatory body is an ordinary member, associate member or that is, or affiliate of the International Organisation of Securities Commissions (**IOSCO**) or listed on an exchange that is supervised by a member of IOSCO
- a promotion directly communicated to an identifiable category of persons, not exceeding 50 in number or
- a 'Red Herring' prospectus, which is to be circulated in advance of the final offer, which contains appropriate disclaimers.

Any prospectus circulated to the public in the Bailiwick, or outside the Bailiwick by a Guernsey entity, must meet the requirements of the Prospectus Rules and be delivered to the GFSC for registration on payment of an application fee. Any changes to the contents of the prospectus must be notified to investors.

14 Expert advice is on hand

Mourant's funds team provides advice in relation to a broad range of funds in Guernsey, Jersey, Luxembourg, the BVI and the Cayman Islands, including hedge funds, property funds, private equity funds, venture capital funds and money market funds. It advises on the establishment of investment funds, fund-related deals and provides ongoing advice in relation to fund structures.

15 An 'at a glance' overview of investments funds in Guernsey

Regime	Timing	Applicable law/ regulations/rules	Features
Authorised			
Authorised open-ended	four to eight weeks	Class A, B, or Q Rules	Full authorisation of the GFSC
Authorised closed-ended	four to eight weeks	Closed-Ended Rules	Full authorisation of the GFSC
Licensee	four to eight weeks	POI Law	
QIF			

Regime	Timing	Applicable law/ regulations/rules	Features
Qualifying investor fund (open-ended)	three business days	Class A, B, or Q Rules, QIF Guidance	Full authorisation of the GFSC but relying on warranties of the administrator as to promoter due diligence, investment procedures and risk disclosure
Qualifying investor fund (closed-ended)	three business days	Closed-Ended Rules, QIF Guidance	Full authorisation of the GFSC but relying on warranties of the administrator as to promoter due diligence, investment procedures and risk disclosure
Licensee	10 business days	POI Law	Fast track licensee application
Registered			
Registered open- or closed- ended	three business days	Registered Rules, Prospectus Rules	Registration with the GFSC received, but disclaimer in prospectus that GFSC is relying on warranties of the administrator
Licensee	10 business days	POI Law	Fast track licensee application
Circulation of a prospectus		Prospectus Rules - apply to any prospectus circulated to more than 50 people in the Bailiwick or outside the Bailiwick by a Guernsey entity* *Refer to exemptions at paragraph 13 above	Prospectus must meet the requirements of the Prospectus Rules and be delivered to the GFSC for registration on payment of an application fee
Private Investment			
PIF open- or closed-ended	one business day	PIF Rules	PIF should comprise no more than 50 legal or natural persons holding an ultimate economic interest
Licensee	one business day	POI Law	Fast track licensee application

Contacts

A full list of contacts specialising in investment funds can be found here.