

COLLAS DAY | COMMERCIAL

Investment funds in Guernsey

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1. Introduction

- 1.1 Collective investment funds have been operating in Guernsey for four decades, and Guernsey-based funds are promoted and sponsored by leading institutions in over 38 countries. As a result, there is a healthy choice of experienced fund service providers such as administrators, custodians, auditors, tax and legal advisors.
- 1.2 The main advantages of establishing a fund in Guernsey are:
 - 1.2.1 Flexibility of structure and regulation
 - 1.2.2 Experienced service providers
 - 1.2.3 Stability of government and internationally compliant standards
 - 1.2.4 Access to the Channel Islands Stock Exchange (CISX)
 - 1.2.5 Taxation

2. Legal structures

- 2.1. Guernsey funds may be structured in the traditional way as companies, unit trusts or limited partnerships. Guernsey also offers the potential to structure the relevant legal entity as an incorporated cell company (ICC) or a protected cell company (PCC). A PCC is a single legal entity with distinct cells, the assets and liabilities of each cell being segregated by law from the assets and liabilities of the other cells. An ICC is similar to a PCC except that each cell is a separate legal entity, effectively a company within a company.
- 2.2. Choice of structure will generally depend on the needs of the investors. Relevant factors include tax treatment in investors' home jurisdiction of income and capital distributions from the fund.

3. CISX listing

Funds may be listed on the CISX regardless of whether they are companies, unit trusts or limited partnerships.

4. Regulation of funds

- 4.1 Funds are regulated by the Guernsey Financial Services Commission (GFSC) under The Protection of Investors (Bailiwick of Guernsey) Law, 1987 (POI Law).
- 4.2 The POI Law characterises funds (be they open-ended or closed-ended) into two categories for regulatory purposes: authorised funds and registered funds.
- 4.3 Authorised funds are regulated and subject to continuing supervision by the GFSC. Within this category, open-ended funds are classified as A, B or Q funds and are subject to the Class A, B or Q Rules respectively. Authorised closed-ended funds are subject to The Authorised Closed-Ended Investment Schemes Rules 2008.

4.4 Registered funds are subject to ongoing supervision by the GFSC. Open-ended and closed-ended registered funds are subject to The Registered Collective Investment Scheme Rules 2008. These rules are generally regarded as being less onerous than those applicable to authorised funds.

4.5 The Prospectus Rules 2008 apply to all registered funds and set out the requirements for disclosure in the offer documents of the fund.

4.6 Registered funds cannot be sold to the public in Guernsey except by or through a Guernsey regulated entity.

5. Regulation of service providers

- 5.1 The GFSC also regulates the licensing of fund service providers, such as administrators, custodians and investment managers/ advisers (if based in Guernsey). The POI Law requires any person who carries out "controlled investment business" in or from within the Bailiwick of Guernsey to obtain a licence from the GFSC. Controlled investment business includes activities such as investment management or advice, administration and custody. In addition, the manager of a Guernsey fund, or general partner (if the fund is established as a limited partnership) will generally require a POI licence.
- 5.2 An open-ended fund must have a Guernsey-resident administrator (called the designated manager) and custodian trustee (the designated trustee). The designated trustee must be independent of the investment manager and the designated manager. Each of the designated manager and designated trustee must be licensed by the GFSC.
- 5.3 A closed-ended fund will require a designated manager. In the absence of a formal custodian, the GFSC must be advised as to the provisions for custody of the fund's assets.
- 5.4 There is no requirement for a Guernsey fund to have a separate investment manager. However, in practice, an investment manager may still be put in place for commercial and risk management purposes. Typically, the manager will be a special purpose vehicle, formed as a subsidiary of the promoter.
- 5.5 Where the fund has a separate investment manager (or advisor), these need not be resident or licensed in Guernsey, provided the services are performed outside of Guernsey.

6. Process for Authorisation / Registration

6.1 *Authorised funds*

6.1.1 There is a three-stage process:

6.1.1.1 Outline consent - GFSC is provided with outline details of the fund together with information in response to the new promoter's checklist (if the promoter is not already known to the GFSC).

6.1.1.2 Interim consent - GFSC is provided with a near final draft of the scheme particulars and the appropriate application form confirming compliance with applicable rules, plus the application fee.

6.1.1.3 Final consent - certified copies of final versions of scheme particulars and signed agreements with service providers must be submitted to GFSC. Final consent is usually obtained within 2-3 days. The other stages take longer, and the overall process can take 6-8 weeks for a new promoter.

6.2 *Qualifying Investor Funds (QIFs)*

6.2.1 Alternatively there is a streamlined approval process available for authorised funds, known as the QIF regime. A fund that uses this procedure can only be targeted at certain professional or experienced investors. The administrator of a QIF is responsible for collecting due diligence on the fund promoter and must make certain warranties to the GFSC as to their fitness and propriety. The GFSC will grant authorisation for a QIF within 3 working days of submission of a completed application.

6.3 *Registered funds*

6.3.1 As with the QIF regime, the administrator of the fund must make certain warranties to the GFSC as to the fitness and propriety of the promoter.

6.3.2 Upon submission of a registration application, which must include the warranties from the administrator, certified copies of final versions of scheme particulars and signed agreements with service providers, the GFSC will issue a declaration of registration within 3 working days.

7. Obtaining a POI licence

7.1 The process for obtaining a POI licence for a Guernsey-based manager or general partner of a fund is run concurrently with the process for authorisation or registration of the fund. In respect of QIF or registered fund applications there is the option to use a fast track POI licensing procedure, which will ensure a 10 working-day turn-around time. Again, the fund's administrator must provide certain warranties to the GFSC as to the fitness and propriety of the persons behind the manager or general partner.

8. Taxation

8.1 There are no capital, value added or inheritance taxes in Guernsey, nor any stamp or document duties except in respect of Guernsey real property.

8.2 With the exception of certain businesses, companies (including funds) now pay a standard rate of 0% income tax on profits. Funds still have the option to apply for exempt company status (on payment of an annual fee of £600). One advantage of maintaining exempt status is that Guernsey resident shareholders are liable to Guernsey tax on a distribution-only basis.

9. UCITS III

9.1 In November 2008 the GFSC issued new rules for Class A funds in the form of the Authorised Collective Investment Schemes (Class A) Rules, 2008, to bring Guernsey's Class A rules in line with changes made in the UK by the Financial Services Authority in February 2008 to the UK Collective Investment Schemes sourcebook as a result of the liberalisation of rules under UCITS III. The new rules are currently awaiting confirmation from the FSA and Treasury that they will be designated in the UK and therefore available for passporting of funds into the EU.

For more information, please refer to our Investment Funds booklet (available on our website: Knowledge) and the GFSC's website www.gfsc.gg

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