



INVESTMENT FUNDS IN GUERNSEY

NOVEMBER 2015

Guernsey has been an established base for collective investment funds for decades. Guernsey-based funds are promoted and sponsored by leading institutions in over 40 countries. As a result, there is a healthy choice of experienced fund service providers such as administrators, custodians, auditors, tax and legal advisors.

The main advantages of establishing a fund in Guernsey are:

- Flexibility of structure and regulation
- Experienced service providers
- Stability of government and internationally compliant standards
- Access to the Channel Islands Securities Exchange (CISE) (based in Guernsey)
- Taxation

Taxation

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

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.

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

Guernsey Funds and AIFMD

Guernsey is a "third country" non-EU jurisdiction under the Directive 2011/61/EU on alternative investment fund managers (AIFMD) and has established a dual regime which provides a flexible regulatory framework for fund managers to comply with AIFMD without being required to do so when compliance is not required.

Legal structures

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

Guernsey funds may be structured in the

WE ARE OFFSHORE LAW

BVI | Cayman | Guernsey | Jersey | London





from the fund.

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

traditional way as companies, unit trusts or limited partnerships.

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.

CISE listing

Funds may be listed on the CISE regardless of whether they are companies, unit trusts or limited partnerships (for more information about the listing of funds on the CISE please request our FAQs note).

Regulation of funds

Funds are regulated by the Guernsey Financial Services Commission (GFSC) under The Protection of Investors (Bailiwick of Guernsey) Law, 1987 (POI Law).

The POI Law characterises funds (be they open-ended or closed-ended) into two categories for regulatory purposes: authorised funds and registered funds.

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.

Registered funds are subject to ongoing supervision by the GFSC. Open-ended and closed-ended registered funds are subject to the same GFSC rules. These rules are generally regarded as being less onerous than those applicable to authorised funds.

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

Private Investment Funds are relatively new type of registered fund. For more information on Private Investment Funds [click here](#).

Regulation of service providers

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.

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

WE ARE OFFSHORE LAW



designated manager and designated trustee must be licensed by the GFSC.

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.

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.

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.

Outsourcing is permitted if certain conditions are met.

Process for approval

Authorised funds

There is a three-stage process:

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).
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.
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.

Qualifying Investor Funds (QIFs)

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 the promoters fitness and propriety. The GFSC will grant authorisation for a QIF within 3 working days of submission of a completed application.

Registered funds

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. 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.

WE ARE OFFSHORE LAW

BVI | Cayman | Guernsey | Jersey | London





Obtaining a POI licence

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.

WE ARE OFFSHORE LAW

BVI | Cayman | Guernsey | Jersey | London





FOR MORE INFORMATION PLEASE CONTACT:



PAUL WILKES

Consultant* // Guernsey

t:+44 (0) 1481 734268 // e:paul.wilkes@collascrill.com



WAYNE ATKINSON

Partner // Guernsey

t:+44 (0) 1481 734225 // e:wayne.atkinson@collascrill.com



GARETH MORGAN

Group Partner* // Guernsey

t:+44 (0) 1481 734264 // e:gareth.morgan@collascrill.com

WE ARE OFFSHORE LAW

BVI | Cayman | Guernsey | Jersey | London

