

Guernsey Investment Funds Guide 2024 (Chambers)

Briefing Summary: Carey Olsen has contributed to the Chambers Global Practice Guide on Investment Funds for Guernsey, which provides the latest information on alternative investment funds and retail funds, including fund formation, restrictions on investors, the regulatory environment, operational requirements and the tax regime.

Service Area: Investment Funds

Sector: Investment and Wealth Management

Location: Guernsey

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1. Market Overview

1.1 State of the Market

Guernsey is frequently used by advisers and managers globally for the formation/domiciling of investment funds. Guernsey is one of the world's largest offshore finance centres, with a thriving funds industry.

As of 30 June 2023, over 1,300 investment funds and over 1,550 sub-funds are currently domiciled and/or administered in the island. The most recent aggregate value of funds under management and administration in Guernsey is reported as over USD500 billion, of which over GBP378 billion is in closed-ended Guernsey funds.

Guernsey attracts all types of fund sponsors/managers – ie, sponsors/managers of:

- private funds;
- hedge funds;
- listed funds; and
- quasi-retail funds (although there is no UCITS equivalent offering in Guernsey).

Additionally, the fund "types" include the full span of asset classes and strategies, such as:

- alternatives (including private equity, buyout, debt, infrastructure, real estate, venture capital, tech, etc); and
- open-ended funds (again, with a broad range of asset classes).

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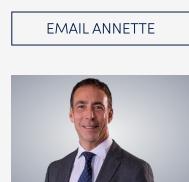
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Closed-ended alternative/private funds are the most common fund type attracted to Guernsey as a funds domicile, with the remainder being Guernsey open-ended funds and non-Guernsey schemes.

2. Alternative Investment Funds

2.1 Fund Formation

2.1.1 Fund Structures

The principal legal vehicles used to set up alternative investment funds are as follows:

- open-ended – most open-ended funds established in Guernsey are structured as limited companies, protected cell companies or incorporated cell companies;
- closed-ended – most closed-ended funds established in Guernsey are structured as limited partnerships; and
- unit trusts are also used for both open and closed-ended Guernsey funds.

The Advantages and Disadvantages of Using Such Structures Companies

All types of company:

- offer limited liability to investors;
- are managed by a board of directors;
- are non-tax transparent; and
- (unless they elect otherwise) are deemed Guernsey-resident for Guernsey tax purposes.

A protected cell company provides (by way of statute) for the creation, within the single legal entity of that company, of separate pools of assets segregated from the other assets and liabilities of the company and its other cells, with creditors having recourse limited to the assets of a particular cell.

An incorporated cell company takes this statutory segregation one step further such that each cell is a separately registered legal entity with:

- its own memorandum and articles of incorporation;
- its own registration number; and
- its own board of directors (though the board composition of each incorporated cell must have one director in common with the board of the core).

In a protected cell company, the cells are not separately registered legal entities, and the protected cell company (as a single legal entity) has a single board of directors and memorandum and articles of incorporation.

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Limited partnerships

A limited partnership is comprised of:

- one or more general partners who are jointly and severally liable for all debts of the limited partnership without limitation; and
- one or more limited partners who contribute (or agree to contribute) a specified sum to the capital of the limited partnership, and who are not liable for any debts of the limited partnership beyond the amounts contributed (or agreed to be contributed).

The property of the limited partnership is held on trust by the general partners jointly as assets of the limited partnership in accordance with the terms of the limited partnership agreement. Limited partnerships are tax-transparent for Guernsey tax purposes.

Unit trusts

A unit trust is not a separate legal entity but is a fiduciary relationship between a trustee and one or more beneficiaries in relation to particular assets. This relationship is constituted by an agreement in writing, commonly known as a "trust instrument". In the context of a fund established as a unit trust, the trust instrument will contain (in addition to elements/provisions relating to the relevant trust law) contractual provisions that will exist between a manager (appointed by the trustee to manage the assets) and the trustee.

The assets of a unit trust are held by its trustee on trust for the benefit of the beneficiaries (the unit-holders (investors)) and are managed by the manager, who may appoint one or more investment managers or advisers to assist it. Contracts in relation to the management and administration of the trust will be entered into by the manager; whereas the trustee will enter into contracts in relation to the assets themselves, such as bank deposits, borrowings and security agreements.

The participants' interests in the above vehicles are referred to accordingly:

- for companies – shares;
- for limited partnerships – limited partnership interests; and
- for unit trusts – units.

Guernsey investment managers and/or investment advisers of alternative investment funds are principally established as companies or limited liability partnerships.

2.1.2 Common Process for Setting Up Investment Funds

Every “collective investment scheme” (“fund”) domiciled in Guernsey will be subject to the provisions of Guernsey’s principal funds legislation (the Protection of Investors (Bailiwick of Guernsey) Law, 2020, as amended (the “POI Law”)) and regulated by Guernsey’s regulatory body for the finance sector (the Guernsey Financial Services Commission (GFSC)). The POI Law splits Guernsey funds into two categories:

- “registered funds”, which are registered with the GFSC; and
- “authorised funds”, which are authorised by the GFSC.

Essentially, the difference between authorised funds and registered funds is that authorised funds receive their authorisation following a substantive review of their suitability by the GFSC, whereas registered funds follow a “fast track” regime whereby they receive their registration following a representation of suitability from a Guernsey body holding a POI Law licence. Such body would be the administrator, which scrutinises the fund and its promoter in lieu of the GFSC, and takes on the ongoing responsibility for monitoring the fund – effectively a form of “self-certification” by a Guernsey licensed administrator. One exception to this is authorised funds which opt into the “qualifying investor fund” regime – these also benefit from the “fast track” regime.

The rules governing the different classes of Guernsey funds also distinguish between whether they are open-ended or closed-ended (or can choose from either). A Guernsey fund is open-ended if the investors are entitled to have their units redeemed or repurchased by the fund at a price related to the value of the property to which they relate (ie, the NAV).

The POI Law grants the GFSC the ability to develop different classes of authorised and registered funds, and to determine the rules applicable to such classes. The following types of authorised and registered funds are currently available.

Authorised Funds

Authorised fund types are as follows.

- Class A: retail funds offering Class A funds have largely been superseded by the AIFMD regime. These are open-ended only.
- Class B: these can be structured as retail products marketed to the public, or established as strictly private or institutional funds. They are open-ended only.
- Class Q: these are not retail funds as they can only be beneficially owned by qualifying professional investors (essentially, government bodies or high net worth individuals or entities, with a minimum investment of USD100,000). They are open-ended only.
- ACIS: authorised closed-ended investment schemes. These are closed-ended funds which are subject to the GFSC’s permanent and continuing supervision.

Registered Funds

Registered fund types are as follows.

- RCIS funds: registered closed-ended investment schemes, commonly referred to as "registered funds" (as they were the only type of registered fund until the introduction of private investment funds). RCIS funds may be open or closed-ended.
- Private investment funds (PIFs): intended for funds with a small number of investors. They are not suitable to be used as retail funds.

Originally introduced in 2016, there are now three types of PIFs, as follows.

Route 1

The "POI Licensed Manager" PIF is suited to fund managers that have a closer relationship with their investors. Its distinguishing features include:

- no requirement for minimum investment;
- no requirement for a prospectus;
- a maximum of 50 legal or natural persons holding an economic interest (with no more than 30 admitted in a 12-month period); and
- no limit imposed on the number of potential investors to which the fund can be marketed.

Route 2

A "Qualifying Private Investor" PIF is available to investors who can evaluate the risks and strategy of investing in a PIF and bear the consequences of investment, including the possibility of any loss arising from the investment. The relevant rules contain related definitions of "professional investor", "experienced investor" and "knowledgeable employee" regarding how an investor can be categorised as a Qualifying Professional Investor.

Qualifying Private Investor PIFs are also subject to a maximum of 50 legal or natural persons holding an economic interest in the fund. Marketing can take place to a maximum of 200 people. Investors must be provided with a disclosure statement that states all material information (including risk disclosures) that an investor would reasonably require to make an informed judgement about the merits and risks of investing in the PIF, as well as certain prescribed disclosures. The administrator must make a declaration to the GFSC that effective procedures are in place to restrict the fund to Qualifying Professional Investors. The administrator should also receive written acknowledgement of receipt of the above-mentioned disclosure statement from investors.

Route 3

A "Family Relationship" PIF is available to investors who share a family relationship or are an employee of the family. The Family Relationship PIF cannot be marketed outside the family group. The administrator must make a declaration to the GFSC that effective procedures are in place to ensure that all investors fulfil the requirement of being related as a family.

Qualifying Investor Funds (QIFs)

An authorised fund may apply to the GFSC to be approved as a QIF, following which the GFSC's QIF Guidance will apply to it in addition to the authorised rules to which it is already subject. QIFs may only admit investors which are: "professional investors", "experienced investors", or "knowledgeable employees".

The QIF must have a promoter (ie, the party ultimately responsible for the fund's success) that is fit and proper. There must be effective procedures in place to ensure that only qualifying investors are admitted, and the economic rationale for the fund and any attendant risks must be clearly disclosed. QIFs may be open or closed-ended.

Manager-Led Products (MLPs)

Consistent with the approach taken by the EU in the AIFM Directive, the MLP regime regulates only the primary alternative investment fund manager (AIFM) in respect of one or more alternative investment funds (AIFs). The MLP regime is intended to be used by AIFMs seeking to market an AIF into the EEA under the national private placement regimes. AIFMs wishing to access the MLP regime must comply with Guernsey's AIFMD Rules – which mirror the rules of the AIFMD.

The GFSC's standard application procedure for authorised funds (ie, Class A funds, Class B funds, Class Q funds and ACIS funds) that do not elect to be approved as QIFs is a three-stage process:

- stage one – outline authorisation;
- stage two – interim authorisation; and
- stage three – formal authorisation once all issues have been resolved and final documentation has been received.

Core documents are as follows:

- constitutional documents of the fund vehicle;
- information particulars/offering memorandum;
- application form/subscription agreement; and
- material contracts – eg, investment management agreement, administration agreement, custody agreement (as applicable).

The GFSC provides the following indicative timeframes:

- outline authorisation within 28 business days;
- interim authorisation within ten business days; and
- formal authorisation within seven business days.

The GFSC offers fast-track applications in respect of:

- RCIS funds and authorised funds which elect to be approved as QIFs (three business days);
- fast-track POI licence applications, where the manager of RCIS funds and QIFs applies for its licence under the POI Law simultaneously with the funds' application (ten business days, which runs concurrently with the relevant fund application); and
- PIFs, including the manager's licence (one business day).

Core documents for registered funds are as follows.

For RCIS funds:

- constitutional documents of the fund vehicle;
- information particulars/offering memorandum;
- subscription agreement; and
- material contracts – eg, investment management agreement, administration agreement.

For PIFs:

- constitutional documents of the fund vehicle;
- subscription agreement; and
- material contracts – eg, investment management agreement, administration agreement.

Note that PIFs are not required to produce information particulars/offering memorandums (although a Route 2 PIF must produce a disclosure statement).

2.1.3 Limited Liability

Investor limited liability is provided by the fund vehicle. The most used fund vehicles – limited companies, limited partnerships and unit trusts – all offer limited liability to investors. In general terms, the limits or restrictions on benefiting from limited liability are typically related to whether or not investors participate in the “management” of the fund – eg, a limited partner in a fund that is a limited partnership may lose their limited liability status if they participate in the management of the limited partnership.

Guernsey’s limited partnership law provides for specific safe harbours permitting limited partner involvement in decisions without jeopardising their limited liability status.

2.1.4 Disclosure Requirements

An offering document (made up of one or more documents, which may include the core documents of the fund – see 2.1.2 Common Process for Setting Up Investment Funds), containing the requisite disclosures, must be produced for all types of authorised funds and for registered funds other than PIFs. In each case, the specific disclosure requirements for each fund type must be met.

For a Class A fund, the fund’s prospectus must state/contain:

- a description of the fund;
- its investment objective and policy;
- reporting, distributions and accounting dates;
- characteristics of the units;
- particulars of the manager;
- particulars of the directors where the fund is a company;
- particulars of the trustee;
- particulars of any investment adviser;
- the name of the auditor;
- material contract summaries;

- details of the name and address of the registrar;
- details of payments to be made out of fund property;
- disclosure of any decision to treat income expense payments as a capital expense;
- an estimate of the expenses to be incurred by a company fund in respect of its movable and immovable property;
- details of the valuation policy and procedures;
- details of the dealing policy and procedures;
- for a single-priced fund, disclosures in respect of dilution;
- the manager's normal basis of pricing (forward and historic);
- details of any preliminary charge;
- details of any redemption charge;
- information on the umbrella fund, if relevant;
- application of the prospectus contents to an umbrella fund;
- details of any marketing arrangements into the EEA; and
- any other material information reasonably required by an investor to make an informed investment decision.

For a Class B fund, the fund's information particulars must state/contain:

- the name and structure of the fund;
- the names and addresses of key service providers to the fund;
- the investment objectives and restrictions;
- the hedging powers and restrictions (or an appropriate negative statement);
- the borrowing powers and restrictions (or an appropriate negative statement);
- certain accounting and reporting matters;
- the issue and redemption procedure;
- the valuation procedure;
- holders' rights;
- the distribution policy;
- directors' and other material interests;
- fees and expenses;
- sufficient risk warnings;
- the fund's tax status and tax treatments in jurisdictions where it will be marketed; and
- any other material information reasonably required by an investor to make an informed investment decision.

For a Class Q fund, the fund's offering documents must state:

- the name and status of the fund as a Class Q fund;
- the names and addresses of key service providers to the fund
- a definition of qualifying professional investors and a statement that only qualifying professional investors are eligible to invest;
- the constitution and objectives of the fund;
- the characteristics of units in the fund;
- disclosures in respect of the valuation of the property, charges and distributions;
- the sale and redemption procedure;
- when annual accounts will be published;
- sufficient risk warnings; and

- any other material information reasonably required by an investor to make an informed investment decision.

For an ACIS fund, the fund's information particulars must state/contain:

- the name and structure of the fund;
- the names and addresses of key service providers to the fund;
- the investment objectives and policy;
- the duration of the fund;
- details of the accounting and reporting policies and procedures;
- the subscription procedures;
- the valuation procedures (if any);
- shareholders' rights;
- the distribution policy;
- details of the fees and expenses;
- the fund's tax status and tax treatments in jurisdictions where it will be marketed; and
- any other material information reasonably required by an investor to make an informed investment decision.

For an RCIS fund, the fund's information particulars must state/contain:

- details relating to the offer;
- particulars of the share capital, etc;
- a statement of the value of any goodwill and preliminary expenses;
- a material contract summary;
- directors' and other material interests;
- any options and prior interests;
- details of all borrowings and borrowing powers;
- details of the accounting and reporting policies and procedures;
- registered office details;
- principal establishments;
- details of the designated administrator and custodian (if any);
- details of the directors and secretary of the fund company, corporate general partner or corporate trustee;
- details of the general partner or trustee (if any);
- details of the auditor, legal advisers and principal bankers;
- details of significant beneficial ownership;
- voting and other rights; and
- any other material information reasonably required by an investor to make an informed investment decision.

For a Qualifying Private Investor PIF, the fund's disclosure statement should state all material information (including risk disclosures) that an investor would reasonably require to enable such investor to make an informed judgement about the merits and risks of investing in the PIF.

2.2 Fund Investment

2.2.1 Types of Investors in Alternative Funds

Institutional investors represent the largest single category of investors in Guernsey-domiciled funds, although sovereign wealth funds, high net worth individuals and family offices are also very active in Guernsey's investment funds market.

2.2.2 Legal Structures Used by Fund Managers

Guernsey investment managers and/or investment advisers of alternative investment funds are principally established as companies or limited liability partnerships.

2.2.3 Restrictions on Investors

Restrictions on ownership of fund interests only apply in relation to funds regulated under the following regulatory regimes in Guernsey.

Class Q Funds

Admission is limited to qualifying professional investors, defined as:

- governments, local authorities or public authorities (in the Bailiwick or elsewhere);
- trustees of trusts which, at the time of investment, have net assets in excess of GBP2 million (or currency equivalent);
- a body corporate or limited partnership, if it or any holding company or subsidiary of it has, at the time of investment, net assets in excess of GBP2 million (or currency equivalent); or
- an individual who has, together with any spouse, at the time of investment, a minimum net worth (which excludes that individual's main residence and household goods) of GBP500,000 (or currency equivalent).

QIFs

Admission is limited to qualifying investors, which are defined as professional investors, experienced investors and knowledgeable employees.

A professional investor is:

- a government, local authority, public authority or supranational body (in the Bailiwick or elsewhere);
- a person, partnership or other unincorporated association or body corporate, (whether incorporated, listed or regulated in an OECD country or otherwise) whose ordinary business or professional activity includes, or it is reasonable to expect that it includes, acquiring, underwriting, managing, holding or disposing of investments whether as principal or agent, or the giving of advice on investments;

- an affiliate of the Qualifying Investor Fund or an associate of an affiliate of the Qualifying Investor Fund (the terms "affiliate" and "associate of an affiliate" are intended to refer to financial services businesses or financial services professionals associated, directly or indirectly, with the operation of the fund in question); or
- an individual investor who makes an initial investment of no less than USD100,000 or equivalent in the fund in question – provided the initial test has been met, subsequent investments by the same investor may be of lower amounts.

An experienced investor is a person, partnership or other unincorporated association or body corporate which has in any period of 12 months (whether on their own behalf or in the course of their employment by another person) so frequently entered into transactions of a particular type in connection with:

- open-ended and closed-ended collective investment schemes and/or
- general securities and derivatives as defined in Schedule 1 of the POI Law (in summary, that definition includes equities, bonds, warrants, options, futures, contracts for differences and rights on any of those investments).

This means transactions of substantial size entered into with, or through the agency of, reputable persons who carry on investment business, where they can reasonably be expected to understand the nature of, and the risks involved in, transactions of that description. Alternatively, it means persons who provide a certificate from an appropriately qualified investment adviser confirming that the investor has obtained independent advice.

A knowledgeable employee is:

- a person who is (or has been within a period of three years up to the date of application for investment in the Qualifying Investor Fund) an employee, director, general partner, consultant or shareholder of, or to, an affiliate appointed by the Qualifying Investor Fund to advise, manage or administer the investment activities of the Qualifying Investor Fund, and who is acquiring an investment in the Qualifying Investor Fund as part of their remuneration or an incentive arrangement or by way of co-investment, either directly or indirectly, through a personal investment vehicle (such as a trust) for or substantially for that person; or
- any employee, director, partner or consultant to or of any person referred to above, or anyone who has fulfilled such a role in respect of any person referred to above, within a period of three years up to the date of application for investment in the Qualifying Investor Fund (the term "employee" only covers persons who are, or have been, employed in a relevant role and would not extend to clerical, secretarial or administrative roles).

Route 1 PIFs

Admission is limited to investors able to sustain any losses incurred on their investment at the time they make their investment.

Route 2 PIFs

Admission is limited to “qualifying private investors”, which are defined as professional investors, experienced investors and knowledgeable employees. The definitions of these categories of investors are essentially the same as for QIFs, as set out above.

Route 3 PIFs

Admission is limited to investors sharing a family relationship, or who are eligible employees of the family (who must also meet the definition of a “qualifying private investor”).

2.3 Regulatory Environment

2.3.1 Regulatory Regime

Investment business in Guernsey is regulated by the GFSC, and the principal legislation governing the conduct of investment business (including funds and associated entities) is the POI Law. Each type of collective investment scheme is subject to particular rules issued by the GFSC – for example, in respect of RCIS funds, the Registered Collective Investment Scheme Rules and Guidance, 2020.

Only Class A funds, which have been largely superseded by the AIFMD regime, are subject to regulatory limitations on their investments.

2.3.2 Requirements for Non-local Service Providers

The requirement to have a Guernsey-based manager depends on the particular regulatory regime chosen to regulate the fund. For the most part, the regulatory regimes do not require a Guernsey-based manager (save for Route 1 PIFs, as described below). However, as indicated in 1.1 State of the Market, the most common fund type is the closed-ended private fund, which is generally structured as a limited partnership or corporate. Consequently, in the context of the limited partnership structure, the Guernsey-based general partner of these funds is usually the “manager” of the fund, which is then advised by a non-Guernsey adviser (generally UK-based). In the corporate structure, the manager is usually non-Guernsey-based (again, generally UK or US-based).

All Guernsey funds must appoint a local designated administrator, which must be licensed by the GFSC. The designated administrator conducts the day-to-day administration of the fund and has certain oversight responsibilities to ensure that the fund is operated in accordance with its constitutional and offering documents and with Guernsey law and regulation.

All open-ended funds must appoint a Guernsey custodian, licensed by the GFSC. Institutional or expert investor hedge funds can be permitted to appoint a foreign prime broker rather than a local custodian or trustee, which is not required to offer physical segregation of fund assets from its own, so long as the fund prospectus makes clear the risks of such arrangement. Retail or less-sophisticated investor hedge funds can be permitted to appoint a foreign prime broker to take control of the fund’s property, but will normally be expected to appoint a local custodian or trustee to oversee the prime broker.

All Route 1 PIFs must appoint a Guernsey-based manager, licensed by the GFSC, and which is responsible for making certain representations and warranties to the GFSC on the ability of investors to suffer losses.

As expected from a jurisdiction with over GBP500 billion of funds under management and administration, Guernsey has a wealth of first class fund service providers, including administrators, lawyers, auditors and custodians. This creates a virtuous circle – as funds under management increase, so does the depth of expertise, which in turn attracts further funds under management.

Guernsey also benefits from a large number of highly experienced, independent non-executive directors providing additional investment management experience, as well as guidance and oversight for funds, and ensuring that the highest standards of corporate governance are observed.

2.3.3 Local Regulatory Requirements for Non-local Managers

As is the case with regulators of most other jurisdictions, the GFSC has direct authority only over those entities which it has licensed or authorised, and which conduct business in or from within Guernsey; and those entities are answerable to the GFSC.

The POI Law makes it a criminal offence subject to certain exceptions, for any person to carry on or hold himself out as carrying on any “controlled investment business” in or from within Guernsey without a POI licence issued by the GFSC. Additionally, it is an offence for a Guernsey body to carry on or hold itself out as carrying on any controlled investment business in or from within a territory outside Guernsey, unless that body is licensed to carry on that business in Guernsey and the business would be lawfully carried on if it were carried on in Guernsey.

As such, in terms of services (eg, investment management or advisory) being provided by non-Guernsey entities from outside Guernsey, the GFSC does not have direct authority over those providers, whose authority rightly sits with the regulator in their home jurisdiction. However, in regulating the relevant fund the GFSC will consider (as one of the elements in authorising or registering the fund and on an ongoing basis) the quality of the non-service providers. The home jurisdiction, home regulatory body and the size and reputation of the provider are all considered by the GFSC. Funds domiciled in Guernsey are, therefore, free to contract the services of any provider in another jurisdiction, subject always to both a determination by the relevant fund of the “fit and properness” of the service provider and to the oversight of the GFSC over the relevant fund.

2.3.4 Regulatory Approval Process

The time required to obtain regulatory approval depends on the type of fund registration/authorisation being sought. More detail is provided in respect of each fund type in 2.1.2 Common Process for Setting Up Investment Funds.

2.3.5 Rules Concerning Pre-marketing of Alternative Funds

There is no legal definition of pre-marketing. However, by convention the GFSC makes a distinction between pre-marketing activities and marketing activities in determining whether the restricted activity of "promotion" is being undertaken by a person.

Pre-marketing activities (such as the circulation of "red herring" documentation) are generally permitted without the need for the person undertaking those activities to obtain a licence or rely on an exemption under the POI Law, provided it is made clear that:

- no offer is being made to investors to subscribe for shares in the collective investment scheme; or
- no invitation is being made to apply to participate in the collective investment scheme by any person.

The authors note, however, that this is not a matter of law but of regulatory practice, so advice should be taken on the specific facts.

2.3.6 Rules Concerning Marketing of Alternative Funds

Pursuant to the POI Law, the promotion of collective investment schemes is a restricted activity and requires a licence under the POI Law (a POI licence) if carried on in or from within the Bailiwick, unless one of the statutory exemptions applies.

If certain conditions are met, including registration with the GFSC, the following may be promoted in the Bailiwick by an overseas promoter to the public without a POI licence:

- EEA AIFs;
- certain UK unit trusts;
- certain Jersey collective investment schemes; and
- certain Isle of Man and Republic of Ireland authorised schemes.

Similarly, if certain conditions are met, including notification to the GFSC, a wider range of funds can be promoted, provided such promotion is restricted to entities licensed by the GFSC.

In addition, neither a POI licence nor a notification to the GFSC would be required by an overseas promoter if the marketing were carried out on a non-solicitation basis. The GFSC would not normally consider marketing campaigns by an overseas promoter that do not originate from within the Bailiwick and that do not specifically target Bailiwick residents (but might include the Bailiwick as part of a wider population) as constituting a restricted activity or requiring a POI licence.

2.3.7 Marketing of Alternative Funds

Subject to the regulatory requirements summarised in 2.3.6 Rules Concerning Marketing of Alternative Funds and 2.3.8 Marketing Authorisation/Notification Process, and the restrictions specific to certain types of funds summarised in 2.1.2 Common Process for Setting Up Investment Funds, there are no restrictions on the types of the investors in Guernsey to whom alternative funds may be marketed.

2.3.8 Marketing Authorisation/Notification Process

Authorisation or notification is required by the national regulator prior to the marketing of alternative funds, if not relying on reverse solicitation.

Promotion to the public of certain categories of funds as mentioned in 2.3.6 Rules Concerning Marketing of Alternative Funds requires a GFSC notification (to which the GFSC must issue a confirmation) and the promoter must be able to satisfy the following:

- that it carries on that activity (ie, the promotion of the funds) in or from within the Bailiwick, in a manner in which it is permitted to carry on such activity in or from within, and under the law of, a designated country or territory which, in the opinion of the Committee for Economic Development, affords (in relation to activities of that description) adequate protection to investors;
- that it has its main place of business in that country or territory and does not carry on any restricted activity from a permanent place of business in the Bailiwick; and
- that it is recognised as a national of that country or territory by its law.

Promotion to entities licensed by the GFSC by a firm with a main place of business in one of the countries or territories designated for the purposes of Section 44(1)(d) of the POI Law (which includes the UK) does not require a licence, provided that a GFSC notification is made and that the promoter is able to satisfy the following.

- The firm does not have a permanent place of business within the Bailiwick.
- The firm is an entity established in a country or territory designated and listed in the first column of the Schedule to the Investor Protection (Designated Countries and Territories) (Bailiwick of Guernsey) Regulations, 2017. This list is extensive and includes signatory countries to the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, established by the International Organisation of Securities Commissions in May 2002 – the authors note that the UK is included.
- The promotion is carried out in accordance with the laws of that designated country or territory.

2.3.9 Post-marketing Ongoing Requirements

Firms making use of marketing to the public regime must pay an annual fee (following an initial fee). Otherwise, there are no ongoing requirements, provided the circumstances do not change.

2.3.10 Investor Protection Rules

Regarding investor protection provisions, see 2.2.3 Restrictions on Investors.

Regulatory reporting requirements depend on the relevant fund type and may be summarised as follows.

- For Class A funds, Class B funds and Class Q funds, the manager must provide to the GFSC:
 - (a) reports issued to investors; and
 - (b) either an annual notification of any changes to the information contained in the application form, or a confirmation that there are no changes.
- For RCIS funds and PIFs, the manager must provide to the GFSC:
 - (a) either an annual notification of any changes to the information contained in the application form, or a confirmation that there are no changes;
 - (b) an audited annual report and accounts within six months of the year-end; and
 - (c) a quarterly statistical return.
- Audited financial statements must be submitted annually to the GFSC.
- Statistical returns must be filed quarterly with the GFSC.
- Proposals for material changes to Guernsey funds must be notified to the GFSC.
- Companies, limited partnerships and partnerships are subject to annual return filing requirements with the Registrar of Companies.
- Annual tax filings must be made by all companies.

Of the above, only the Guernsey Registry annual return is publicly available.

2.3.11 Approach of the Regulator

Guernsey maintains a robust, proportionate, flexible and competitive funds regulatory regime, adopting a risk-based approach to ensure that appropriate levels of investor protection are maintained, while at the same time avoiding unnecessarily complex, prescriptive or burdensome regulation (or granting waivers of certain regulatory requirements where considered appropriate).

The attitude of the regulator continues to be one of fostering constructive approachability. This is built firmly on the basis of a transparent, open and co-operative approach. The GFSC's view has always been to understand at an early stage where there are potential issues, and to identify, with the relevant section of industry, solutions to those issues that will ultimately produce the best outcome for all stakeholders and thereby protect the reputation of Guernsey. As such, the regulator is always open to discussions on regulatory questions, opens issues to consultation and publishes guidance on regulatory matters where such guidance would be helpful to practitioners or the industry as a whole.

The GFSC works closely with the funds industry to ensure that the regulatory regime continues to evolve and provide the kinds of structures required by today's investors, with the protection of those investors (commensurate with their sophistication) at the forefront. There is ongoing engagement between the GFSC and industry experts to further the island's interests.

This engagement has given Guernsey a strong track record in innovation, having created the protected cell company over 25 years ago (now copied globally). More recently, the PIF regime was launched (and subsequently expanded in scope), providing a fund class specifically designed to reflect the often-close relationship between fund managers and their investors, and to facilitate smaller funds with sophisticated investors.

The close relationship between the GFSC and Guernsey's funds industry also ensures a high level of responsiveness. Fund vehicles can be established on a same-day basis and regulatory approval times can be as little as one day. By and large, the GFSC adheres to stated timeframes.

The regulator approaches enforcement on a proportionality basis. This means that "enforcement" spans a range of actions from remediation of breaches to sanctions and criminal proceedings.

2.4 Operational Requirements

Restrictions on types of activity or types of investment, and asset-protection requirements, depend on the relevant fund type and are summarised in 2.2.1 Types of Investors in Alternative Funds.

2.5 Fund Finance

Subject to certain restrictions in respect of Class A funds (see below), Guernsey alternative funds may access fund finance for subscription financing and/or leveraging, provided the appropriate borrowing powers and limits are set out in the fund's offering documents and constitutional documents.

A Class A fund may borrow up to 10% of the value of the fund's property on a temporary basis, subject to any restriction in its constitutional or offering documents, from an eligible institution or an approved bank. Any period of borrowing that exceeds three months must be approved by the fund's trustee/custodian.

Other than the above, there are no statutory or regulatory limits in relation to borrowing, and any such limitations would be a matter for the powers/constitution of the relevant fund.

Finance has traditionally been obtained from banks and/or banking institutions. However, borrowing by Guernsey funds is influenced by the trends in the finance market as a whole; as such, Guernsey-domiciled funds have access to finance from banks and other alternative institutional or personal lenders, including other funds and specialist debt providers, domiciled both in Guernsey and elsewhere.

No common issues are experienced in relation to fund finance.

2.6 Tax Regime

If the fund is structured as a company, it will be subject to income tax at 0% unless it obtains tax-exempt status (where no tax will be applicable) for an annual fee of (currently) GBP1,600. Funds structured as limited partnerships or unit trusts are not themselves subject to Guernsey tax.

Distributions made by a Guernsey fund to Guernsey-resident shareholders may be taxed on the shareholder at the standard income tax rate of 20% for individuals and 0% for corporations, irrespective of whether the corporation is itself taxable in Guernsey on sources of income at a rate other than 0%.

Distributions made by a fund to non-Guernsey-resident investors, whether made during the life of the fund or by distribution on liquidation, will not be subject to Guernsey tax, provided such payments are not taken into account in computing the profits of any permanent establishment situated in Guernsey through which such investor carries on a business in Guernsey.

A Guernsey fund that is structured as a company, and that has not obtained tax-exempt status at the time a distribution is made, would be required to withhold tax at the applicable rate in respect of any distributions made (or deemed to have been made) to shareholders who are Guernsey-resident individuals. Under Guernsey tax law, no withholding of tax should be required in respect of distributions to Guernsey-resident unit-holders of Guernsey funds which are not structured as companies or if, at the time a distribution is made, the Guernsey fund structured as a company has tax-exempt status.

There is no stamp duty or equivalent tax payable in Guernsey on the issuance, transfer or redemption of units in Guernsey funds. Guernsey charges no document duty on the creation or increase of authorised share capital.

The States of Guernsey has passed enabling legislation for the introduction of a system of goods and services tax (GST); however, no decision as to the introduction of GST has been made.

Under current Guernsey tax law, there is no liability to capital gains tax, wealth tax, capital transfer tax or estate or inheritance tax on the issuance, transfer or realisation of units in Guernsey funds (save for registration fees and ad valorem duty for a Guernsey grant of representation when the deceased dies leaving assets in Guernsey which required presentation of such a grant).

Guernsey has a wide-ranging anti-avoidance provision. This provision targets transactions where the effect of the transaction or series of transactions is the avoidance, reduction or deferral of a tax liability. At their discretion, the Director of the Revenue Service will make such adjustments to the tax liability to counteract the effect of the avoidance, reduction or deferral of the tax liability.

Guernsey is committed to adopting the base erosion and profit shifting (BEPS) minimum standards. Guernsey implemented country-by-country reporting in respect of accounting periods commencing on or after 1 January 2016, and has also adopted the spontaneous exchange of tax rulings with other jurisdictions. On 7 June 2017, Guernsey, along with over 60 other jurisdictions, signed the OECD's Multilateral Instrument to Implement Tax Treaty-Related Measures to Combat BEPS and Treaty Abuse.

Like other offshore jurisdictions, Guernsey implemented legislative economic substance requirements, effective from 1 January 2019, to address concerns raised by the EU's Code of Conduct Group on Business Taxation that Guernsey's corporate tax system could facilitate offshore structures aimed at attracting profits which do not reflect real economic substance. Guernsey tax-resident companies and limited partnerships registered in Guernsey will be subject to substance requirements where and to the extent that they carry on a relevant activity. For the funds industry, the most relevant of the above activities will be:

- fund management;
- financing;
- headquartering; and
- distribution and service centres.

However, collective investment schemes (other than self-managed collective investment schemes) are not within the scope of substance requirements, and nor are trusts (although a corporate trustee may be).

3. Retail Funds

3.1 Fund Formation

3.1.1 Fund Structures

Guernsey does not specifically offer retail funds other than Class A funds, which have largely been superseded by the AIFMD regime. Otherwise, all fund types are open to retail investors, subject to the relevant rules specific to each fund type (other than Class Q funds, QIFs and PIFs, which would not be suitable to retail investors).

Subject to those considerations, the previously discussed responses regarding alternative investment funds apply equally to retail funds.

3.1.2 Common Process for Setting Up Investment Funds

See 2.1.2 Common Process for Setting Up Investment Funds.

3.1.3 Limited Liability

See 2.1.3 Limited Liability.

3.1.4 Disclosure Requirements

See 2.1.4 Disclosure Requirements.

3.2 Fund Investment

3.2.1 Types of Investors in Retail Funds

See 2.2.1 Types of Investors in Alternative Funds.

3.2.2 Legal Structures Used by Fund Managers

See 2.2.2 Legal Structures Used by Fund Managers.

3.2.3 Restrictions on Investors

See 2.2.3 Restrictions on Investors.

3.3 Regulatory Environment

3.3.1 Regulatory Regime

See 2.3.1 Regulatory Regime.

3.3.2 Requirements for Non-local Service Providers

See 2.3.2 Requirements for Non-local Service Providers.

3.3.3 Local Regulatory Requirements for Non-local Managers

See 2.3.3 Local Regulatory Requirements for Non-local Managers.

3.3.4 Regulatory Approval Process

See 2.3.4 Regulatory Approval Process.

3.3.5 Rules Concerning Pre-marketing of Retail Funds

See 2.3.5 Rules Concerning Pre-marketing of Alternative Funds.

3.3.6 Rules Concerning Marketing of Retail Funds

See 2.3.6 Rules Concerning Marketing of Alternative Funds.

3.3.7 Marketing of Retail Funds

See 2.3.7 Marketing of Alternative Funds.

3.3.8 Marketing Authorisation/Notification Process

See 2.3.8 Marketing Authorisation/Notification Process.

3.3.9 Post-marketing Ongoing Requirements

See 2.3.9 Post-marketing Ongoing Requirements.

3.3.10 Investor Protection Rules

See 2.3.10 Investor Protection Rules.

3.3.11 Approach of the Regulator

See 2.3.11 Approach of the Regulator.

3.4 Operational Requirements

See 2.4 Operational Requirements.

3.5 Fund Finance

See 2.5 Fund Finance.

3.6 Tax Regime

See 2.6 Tax Regime.

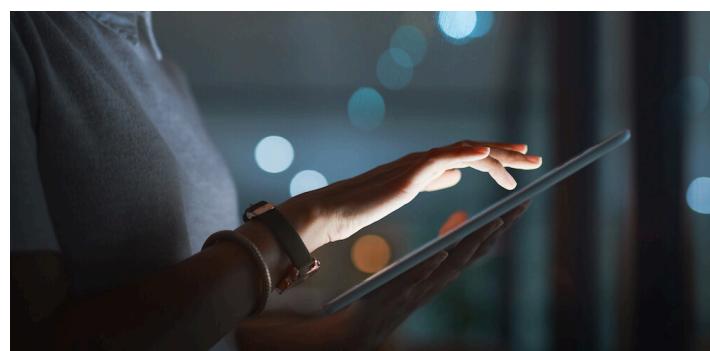
4. Legal, Regulatory or Tax Changes

4.1 Recent Developments and Proposals for Reform

See 2.1.2 Common Process for Setting Up Investment Funds

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