



## Guernsey funds market update: PIF Regime, Companies Law and economic substance requirements for partnerships

Service area / [Investment Funds, Corporate, Taxation and Economic Substance](#)

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### Expansion of Private Investment Fund Regime

In 2016, the Guernsey Financial Services Commission (the “**Commission**”) approved the introduction of a new classification of fund known as the Private Investment Fund (“**PIF**”). The new regime dispensed with any formal requirements for information particulars such as a prospectus in recognition of the special relationship which may exist between managers and investors. This significantly reduced the cost and processing time for launching a fund.

As originally devised, the PIF, which can be either closed or open-ended, could contain no more than 50 legal or natural persons holding an economic interest in the fund (although there was no limit on the number of investors to whom the PIF might be marketed). Every PIF was required to appoint a Guernsey licensed manager and was predicated on the close relationship between the investors and the Guernsey licensed manager. The manager was initially responsible for making certain representations and warranties to the Commission on the ability of investors to suffer losses. In 2018 the warranty requirement was replaced with a declaration, which places a lesser burden on the licensed manager. Any PIF application is processed by the Commission in one business day.

This original PIF “path” has proved very popular and in light of that the existing PIF rules have now been amended (see [The Private Investment Fund Rules and Guidance, 2021](#)) to provide for 3 PIF paths in total, consisting of the existing PIF and two new PIF options, as follows:

- a qualifying PIF – this can be created without an attached Guernsey licensed manager provided all investors meet qualifying investor criteria which are designed to protect more vulnerable investors. At the time of application, the

Guernsey licensed fund administrator will be required to provide confirmations equivalent to those currently provided by a fund administrator in respect of any application under the existing [Qualifying Investor Fund](#) regime; and

- a family PIF – this is a bespoke private wealth structure requiring a family relationship between investors. There is no requirement to appoint a Guernsey licensed fund manager and at the time of application the Guernsey licensed fund administrator will need to provide confirmation that effective procedures are in place to ensure that the PIF is restricted to only eligible family-related investors.

### Changes to Companies Law

With effect from 1 May 2021, the Companies (Guernsey) Law, 2008 (the “**Companies Law**”) has been amended. Certain of the changes may be relevant to funds and include the following:

- Incorporated cell companies (“**ICCs**”) are no longer required to have the same directors on the boards of the ICC and of its cells. There only needs to be one common director between the ICC and any cell. Removing this restriction allows experts in a particular field relating to the business of an individual cell to be appointed to the board, without needing to be appointed to the board of the ICC, or to any other individual cell.
- Virtual company meetings are now expressly allowed. Prior to the changes, the Companies Law required a notice of a meeting to state the place of the meeting and this created uncertainty regarding the ability to hold fully virtual meetings, although hybrid virtual meetings have always been allowed. The Companies Law now makes explicit

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reference to meetings being held potentially entirely electronically or via telephone.

- Off market share buy-backs now require only an ordinary resolution rather than a special resolution. Further, the member whose shares are being acquired is no longer able to exercise the voting rights attaching to those shares being acquired when voting on the resolution, reflecting the position in the UK. Employee share scheme buybacks are even simpler: the ordinary resolution will need to approve the minimum and maximum amounts to be paid, so that the resolution would approve the buy-back mechanism in principle, without having to relate to individual purchases (similar to a market buy back authority). More generally the requirement to obtain the consent of a shareholder whose shares are to be acquired has been removed, thereby enabling, for instance, a company's articles to provide for the purchase by the company of its own shares in the circumstances specified therein.
- Squeeze out rights have been adjusted to allow a bidder to stakebuild outside of a takeover offer and have those shares count towards the 90% threshold (upon which the shares of the remaining minority can be compulsorily redeemed) provided that they are bought for less than the offer price, or the offer price is increased if they pay above the offer price. In addition, the bidder will now be able to keep the offer open for acceptances in parallel with enforcing the squeeze out.

### Expansion of economic substance requirements to partnerships

The Guernsey Revenue Service is proposing to bring partnerships carrying on a relevant activity within scope of the economic substance requirements in Guernsey. Crucially, however, limited partnership collective investment schemes authorised or registered by the Commission are out of scope. Any Guernsey entity undertaking fund management on behalf of the limited partnership fund (e.g. the Guernsey general partner or a separate Guernsey manager) will remain in scope for substance purposes.

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