

Retail investment funds in Guernsey: regulatory overview

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RETAIL FUNDS

1. What is the structure of the retail funds market? What have been the main trends over the last year?

Open-ended retail funds

A significant number of open-ended funds are established in Guernsey and the island continues to attract non-Guernsey open-ended funds due to its ability to provide high quality administration, management and custody services. Such vehicles are often designed to be promoted to institutional or professional investors, rather than retail investors, but they can also be used as retail funds. The funds regime in Guernsey is highly flexible and most types of funds can be used in a number of different markets, including the retail markets.

As at end of September 2020, the Guernsey Financial Services Commission (GFSC) announced that the total net asset value of funds under management and administration for Guernsey domiciled open-ended funds was GBP48 billion. Non-Guernsey open-ended funds that are administered or managed in Guernsey provided a total net asset value of GBP37 billion.

Closed-ended retail funds

The funds sector (and in particular the closed-ended fund sector) is one of the main pillars of the finance industry in Guernsey, with the net asset value of all funds under management and administration for Guernsey domiciled open-ended funds being GBP188.1 billion at the end of September 2020.

The majority of funds established in Guernsey are designed to be promoted to institutional or professional investors, rather than retail investors. However, Guernsey has a significant number of listed funds, whose shares can be acquired by the public on the secondary market.

Guernsey continues to be the global leader for non-UK London Stock Exchange listings, with 102 Guernsey entities listed on the Main Market, AIM or the SFS as at the end of December 2020. Guernsey funds are also listed on many other exchanges such as TISE, Euronext, ISE, ASX and TSX.

In the past year, the Guernsey closed-ended funds sector has experienced increases in aggregate net asset value (with Guernsey domiciled closed-ended funds up by 4.4% to GBP180.4 billion in the year ending in June 2019) as well as significant new launches and sizeable fund-raising by established funds.

Guernsey continues to see a strong growth in the number of funds focusing on equity investments (in particular private equity funds).

2. How are interests in the open and closed-ended funds accessed and priced?

Open-ended retail funds

Authorised funds. These funds are authorised and regulated, and subject to ongoing supervision, by the GFSC. Authorised funds comprise Class A, Class B and Class Q funds (for details of each of these fund classes, see *Question 5, Open-ended retail funds*). In relation to how interests in these funds are accessed and priced:

- **Class A.** Unless a specific limited redemption arrangement applies, for Class A funds there is a requirement for a minimum of two valuation points per month, a minimum of two weeks apart. There is no specified time at which the units are priced. Units must be priced by reference to the net value of the scheme property. There are no provisions specifying the precise manner in which the net value per unit is to be determined. The manager of the scheme is required to carry out a "fair and accurate valuation" of the scheme property. The manner in which this is to be carried out must be set out in the principal documents and the prospectus. There are no provisions specifying the precise manner in which units in the scheme can be bought or redeemed. The manner in which this is to be carried out must be set out in the principal documents and the prospectus.
- **Class B.** For these funds, there are no provisions specifying the precise manner in which net value per unit is determined or the frequency with which this must be determined. There are also no provisions specifying the precise manner in which units in the scheme can be bought or redeemed. This provides maximum flexibility for the manager to select the most appropriate approach. However, the issue, redemption and valuation procedures selected by the manager must be set out in the scheme particulars to enable investors to make an informed decision.
- **Class Q.** For these funds, there are no provisions specifying the precise manner in which net value per unit is determined or the frequency with which this must be determined. There are also no provisions specifying the precise manner in which units in the scheme can be bought or redeemed. This provides maximum flexibility for the manager to select the most appropriate approach. However, the issue, redemption and valuation procedures selected by the manager must be set out in the scheme particulars to enable investors to make an informed decision.

Registered funds. These funds are registered with and regulated by the GFSC. The ongoing supervision is performed by the designated administrator (a local entity authorised by the GFSC, carrying out such supervision on its behalf). Registered funds comprise RCIS funds and private investment funds (for further details of each of these fund classes, see *Question 5, Open-ended retail funds*). In relation to how interests in these funds are accessed and priced:

- **RCIS funds.** There are no provisions specifying the precise manner in which net value per unit is determined or the frequency with which this must be determined. There are also no provisions specifying the precise manner in which units in the scheme can be bought or redeemed. This provides maximum flexibility for the manager to select the most appropriate approach. However, the issue, redemption and valuation procedures selected by the manager must be set out in the scheme particulars to enable investors to make an informed decision.
- **Private investment funds.** There are no provisions specifying the precise manner in which net value per unit is determined or the frequency with which this must be determined. There are also no provisions specifying the precise manner in which units in the scheme can be bought or redeemed. This provides maximum flexibility for the manager to select the most appropriate approach. However, the issue, redemption and valuation procedures selected by the manager must be set out in the scheme particulars to enable investors to make an informed decision.

Closed-ended retail funds

Authorised funds. There are no provisions specifying the precise manner in which net value per unit is determined or the frequency with which this must be determined. There are also no provisions specifying the precise manner in which units in the scheme can be bought or redeemed. This provides maximum flexibility for the manager to select the most appropriate approach. However, the issue and valuation procedures selected by the manager must be set out in the scheme particulars to enable investors to make an informed decision.

Registered funds. See above, *Open-ended retail funds: Registered funds.*

3. Are there any other retail fund options not mentioned in Question 1?

See Question 5, *Open-ended retail funds.*

Fund vehicles and structures

4. What are the main legal vehicles used to set up a retail fund and what are the key advantages and disadvantages of using these structures?

Open-ended retail funds

Legal vehicles. The vehicles most often used for open-ended retail funds are corporate vehicles or unit trusts. Limited partnerships and limited liability partnerships (LLPs) are unlikely to be used for retail funds.

Corporate vehicles. Guernsey company law (The Companies (Guernsey) Law, 2008, as amended) allows for a number of different forms of company. The following types can be used for retail funds:

- **Non-cellular company.** This is a traditional company with limited liability and issuing shares of one or more classes.
- **Protected cell company (PCC).** The PCC takes the form of one company that can form any number of cells, with the assets and liabilities of each cell segregated from the other cells. Shares issued by the PCC are attributed to a cell, so that a shareholder's rights relate only to that cell.
- **Incorporated cell company (ICC).** The same rules apply as for a PCC (see above), except each cell has its own legal personality.

The non-cellular company structure is most frequently used for open-ended retail funds; PCCs and ICCs are more commonly used for hedge funds.

Unit trust. A unit trust is not a legal person in its own right. It is a trust arrangement, under which a trustee holds the assets on trust for the benefit of unitholders, according to the terms of a trust instrument. Investors hold units in the trust, with each unit representing an undivided fractional interest in the trust property. The Trusts (Guernsey) Law, 2007 regulates unit trusts.

Compared to companies, unit trusts have greater flexibility in regulating their own affairs as they see fit, within the confines of the applicable fund rules. Unit trusts are familiar to UK investors in the authorised retail funds market. However, most investors are typically more familiar with corporate entities, and there is a greater body of established learning and practice in relation to the operation and management of companies.

Guernsey company law permits the use of open-ended companies in all circumstances and this therefore removes one of the original advantages of using unit trusts.

Advantages. Unit trusts offer greater flexibility as regards internal governance.

Disadvantages. Investors (particularly non-UK investors) may be more comfortable with corporate structures than they would be with unit trusts.

Closed-ended retail funds

Legal vehicles. The vehicles used for closed-ended retail funds are invariably corporate vehicles (see above, *Open-ended retail funds: Corporate vehicles*). Private equity funds are typically structured as closed-ended limited partnerships, but such vehicles are not appropriate for retail funds.

Advantages. Only corporate vehicles are used, and so the advantages are not relevant.

Disadvantages. Only corporate vehicles are used, and so the disadvantages are not relevant.

REGULATORY FRAMEWORK AND BODIES

5. What are the key statutes, regulations and rules that govern retail funds? Which regulatory bodies regulate retail funds?

Open-ended retail funds

Regulatory framework. The types of open-ended funds are as follows:

- **Authorised funds.** These funds are authorised and regulated, and subject to ongoing supervision, by the GFSC. These funds fall into three classes:
 - **Class A.** These are "true" retail funds that are equivalent to Undertakings for Collective Investment in Transferable Securities (UCITS) in the EU. The rules applicable to Class A funds are the Collective Investment Schemes (Class A) Rules 2008 (Class A Rules). These rules are prescriptive as to the form and content of the fund documents, and place limits on the investment and borrowing powers of the fund. Class A funds benefit from an investor compensation scheme under the Collective Investment Schemes (Compensation of Investors) Rules 1988 (as amended). Class A funds can be registered for sale in numerous countries and promoted or distributed to the public in the UK in the same way as UK-authorised funds (subject to complying with certain notification requirements).

- **Class B.** These can be structured as retail products marketed to the public, or established as strictly private or institutional funds. The rules applicable to Class B funds are the Collective Investment Schemes (Class B) Rules 2013 (Class B Rules). These rules are less prescriptive than for Class A funds, and allow Class B funds greater latitude in their investment and borrowing powers, provided that there is full disclosure in the fund documents.
- **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). The rules applicable to Class Q funds are the Collective Investment Schemes (Qualifying Professional Investor Funds) (Class Q) Rules 1998 (Class Q Rules).
- **Registered funds.** These funds are registered with and regulated by the GFSC. The ongoing supervision is performed by the designated administrator (a local entity authorised by the GFSC, carrying out such supervision on its behalf). Registered funds include:
 - **RCIS funds.** Commonly referred to as "registered funds" (as they were the only type of fund registered until the introduction of private investment funds (see below)) the rules applicable to such registered open-ended funds are the Registered Collective Investment Scheme Rules 2018. The fund documents must contain the disclosures required by the Prospectus Rules 2018. These rules are not prescriptive concerning the features of the fund (for instance, in relation to investment powers) but require full disclosure of all material matters and ongoing notification of specific events. There are no restrictions on who can invest in an RCIS fund, but they are not typically used as retail funds.
 - **Private investment funds.** In 2016, the GFSC introduced a new class of registered fund, the Private Investment Fund (PIF), governed by the Private Investment Fund Rules 2016 (PIF rules). The PIF regime is intended for funds with a small number of investors where there exists a close relationship between the manager of the PIF and the investors. In recognition of this close relationship, the PIF rules do not require an offering document. The PIF must contain 50 or fewer investors and can add no more than 30 investors per year after the first year. The manager of the PIF is responsible for making certain representations and warranties to the GFSC on the ability of investors to suffer losses. Other than this, the PIF rules are not prescriptive concerning the features of the fund (for instance, in relation to investment powers) but require ongoing notification of specific events. There are no restrictions on who can invest in a PIF. They are not suitable to be used as retail funds.
- **Guernsey Green Funds.** In July 2018, the GFSC published the Guernsey Green Fund Rules, creating the world's first regulated green investment fund product. By providing a trusted and transparent product that contributes to the internationally agreed objectives of COP21 (the UN Climate Change Conference), the Guernsey Green Fund will increase investors' access to green investments. As at 30 September 2020, several Green Funds have been launched in Guernsey, with a total net asset value of GBP3.3 billion. Further strengthening its commitment to the green movement, Guernsey released the Green Private Equity Principles on 1 June 2020, a voluntary guide to best practice for general partners. The aim of the principles is to guide general partners towards the goal of sustainability and fighting climate change, with a focus on both the investment process and the portfolio itself. At the time of writing, it remains to be seen whether the COVID-19 pandemic has positively assisted with the shift towards sustainable investing becoming the new normal, but with everything pointed in that direction before 2020, it seems inevitable that the global crisis will push business and individuals to rethink

their priorities. Accreditation as a "Guernsey Green Fund" can be given to both open-ended and closed-ended retail funds.

Regulatory bodies. The GFSC regulates all funds in Guernsey and its powers are derived from the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended (POI Law). The GFSC issues the rules and regulations regulating funds under powers derived from the POI Law.

Closed-ended retail funds

Regulatory framework. The types of closed-ended funds are as follows:

- **Authorised funds.** These are funds that are authorised by the GFSC and are subject to its permanent and continuing supervision. The rules which apply to authorised closed-ended funds are the Authorised Closed-ended Investment Schemes Rules 2008. These rules are not prescriptive concerning the features of the fund (for example, in relation to investment powers) but require full disclosure of all material matters and ongoing notification of specific events.
- **Registered funds.** See above, *Open-ended retail funds: Registered funds.*
- **Guernsey Green Funds.** See above, *Open-ended retail funds: Guernsey Green Funds.*

Regulatory bodies. The GFSC rules governing closed-ended funds are issued under powers derived from the POI Law.

AIFM Directive

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

The first part of the dual regime ensures that Guernsey funds can be marketed in the EEA using national private placement regimes, with the GFSC acting as a local regulator that co-operates with the relevant EEA securities regulator. These are now thoroughly tried and tested routes to market which typically require only partial adherence to the provisions of the AIFM Directive which can result in lower running costs and consequently higher investor returns.

The second part of the dual regime allows managers and depositaries, in connection with the introduction of the pan-European passport, to opt into a regime which is fully compliant with the AIFM Directive, if this is required.

The European Securities and Markets Authority (ESMA) has twice assessed Guernsey and concluded that no obstacles exist to the extension of a "third country" passport to Guernsey, giving the island an "unqualified and positive assessment". However, due primarily to the UK's departure from the EU, it is uncertain when or if the passport regime will be introduced for third countries and so there continues to be a strong trend towards establishing funds with a Guernsey based alternative investment fund manager so that the fund and the manager are free from the full requirements (and associated costs) of the AIFM Directive, but can make use of national private placement regimes if they wish to market the fund in specific EEA jurisdictions. As a result, Guernsey remains particularly attractive for promoters based in the EU, or for promoters in the US and Asia, who may otherwise be discouraged by the complexities of raising capital in the EU.

6. Within the jurisdiction, are there local state, provincial or similar laws that could apply to retail funds?

Guernsey does not have local state, provincial or similar laws.

7. Do retail funds themselves have to be authorised, licensed or registered?

Open-ended retail funds

Open-ended funds must be either authorised or registered (see *Question 5, Open-ended retail funds*), but do not require licensing. Special rules apply to foreign funds (see *below, Foreign retail funds*).

Authorised funds. There are two separate procedures that apply for authorisation of an authorised open-ended fund:

- **Traditional three-stage application process.** This procedure applies to Class A, Class B and Class Q funds only, where they do not seek authorisation under the fast track "Qualifying Investor Funds" procedure (see *below*). It involves the following stages:
 - **preliminary (new promoter's introductory checklist).** Before starting the three-stage application process, it is necessary to identify the promoter of the fund (the person ultimately responsible for the success of the fund, usually the investment manager). If the promoter is not previously known to the Guernsey Financial Services Commission (GFSC), the promoter should review the checklist and provide the information outlined in that form. The GFSC requires a demonstrable track record in the establishment and/or management of investment funds. The GFSC will then indicate whether or not it will consider a formal application from the promoter. New promoters should allow up to three months for this process;
 - **stage one (outline authorisation).** A Form GFA is submitted setting out the basic details of the proposed fund; the fund's objectives; the parties involved; the fees to be charged and any unusual features.
 - The designated manager (the administrator; a locally based entity) and the designated custodian must sign this form. A prospectus is not required at this stage. If the parties meet the GFSC's selection criteria and the proposals are acceptable, the GFSC then issues an outline authorisation. Applicants should allow between six to eight weeks from the submission of the stage one application to the formal authorisation (assuming that no issues arise);
 - **stage two (interim authorisation).** The following are submitted: a nearly final draft of the fund's prospectus (or equivalent document); the investor's application form and the appropriate form for the proposed class of the fund (forms APA, APB and APQ respectively).

These forms act as a checklist and ensure that the required disclosures are included in the fund documents. Derogations can be sought in respect of the Class B and Class Q rules, but no derogations are allowed from the Class A rules. The GFSC aims to issue the interim authorisation within ten working days of the receipt of the application.
 - **stage three (formal authorisation).** This is granted when all issues have been resolved and all conditions have been satisfied, including the GFSC receiving a certified copy of the prospectus and certified copies of all final constitutive documents and key agreements (for example, articles of

incorporation, management agreement, custodian agreement, and so on).

- **Fast track application (Qualifying Investor Funds (QIFs)).** A fast track application process is also available (applicable to Class B funds and Class Q funds only), under which the proposed designated manager of the fund carries out the assessment that the GFSC otherwise carries out at stage three of the traditional process (see *above*). The designated manager submits the QIF application (Form QIF) once all:
 - due diligence on both the parties and the fund structure is complete; and
 - fund documents are in final (or near final) form.

The Form QIF includes warranties from the designated manager to the GFSC concerning the suitability of the fund and the parties involved. The GFSC then undertakes to issue the formal authorisation of the fund within three working days of the receipt of a complete application.

The disadvantage of this fast track process is that investment in the fund must be restricted to qualified investors, which are defined as professional investors, experienced investors or knowledgeable employees.

Registered funds. The process for applying for the registration of an RCIS fund is the same as for the QIF application (see *above*), except that the applicable form is Form REG. The time period of three working days also applies. The type of investor who can invest in the fund is not restricted. The application period for the registration of a private investment fund is also similar to that of the QIF application, except that the applicable form is Form PIF and there is a one working day approval period.

Closed-ended retail funds

Closed-ended funds must be either authorised or registered (see *Question 5, Closed-ended retail funds*) but do not need to be licensed.

Authorised funds. There are two separate processes for applying for authorisation of an authorised closed-ended fund:

- **Traditional three-stage application process.** This process is the same as for authorised open-ended funds (see *above, Open-ended retail funds*), except as follows:
 - **Stage one (outline authorisation).** As there is no requirement for closed-ended funds to appoint a custodian or trustee, there is no requirement for the custodian or trustee to sign the Form GFA;
 - **Stage two (interim authorisation).** Form APC is used. Derogations from the Authorised Closed-ended Investment Schemes Rules 2008 can be sought if either compliance with a particular rule is not appropriate in the circumstances or compliance would require a fund to alter its proposed operations or practices.
 - The GFSC must be satisfied that investors will not be adversely affected before granting derogations.
- **Fast track application (QIFs).** The fast track application process is available for authorised closed-ended funds and is the same as for authorised open-ended funds (see *above, Open-ended retail funds*).

Registered funds. The process for applying for the registration of a registered closed-ended fund is the same as for a registered open-ended fund (see *above, Open-ended retail funds*).

Foreign funds. Closed-ended funds that are constituted outside Guernsey must be authorised or registered in Guernsey if the functions of administration and custody of the fund are carried out within Guernsey. This does not apply if only the administration of the fund is carried out in Guernsey.

Managers and operators

8. Do the operators of retail funds have to be authorised, licensed or registered? What are the key requirements that apply to managers or operators of retail funds?

Open-ended retail funds

Authorisation/licensing/registration requirements. There are two key roles in a Guernsey fund:

- **Promoter.** The term "promoter" is not specifically defined but is generally considered to be the party ultimately responsible for the fund's success. It is usually, but not always, the investment manager. The identity, standing and track record of the fund's promoter are of vital importance to the GFSC when determining whether (or not) to authorise a fund. The GFSC's selection policy requires applicants to be able to demonstrate a favourable track record in an established jurisdiction, involving a business which is:
 - equivalent to the new proposal;
 - financially successful;
 - The following are also taken into consideration:
 - whether the promoter is authorised or licensed by another regulatory;
 - the promoter's ownership, financial resources and reputation; and
 - the experience of the principals behind the promoter.
 - In the case of QIFs and registered funds, the proposed designated manager of the fund carries out the assessment. However, it involves the same considerations and the same criteria as if the GFSC were conducting the review.
- **Designated manager/designated administrator.** All funds authorised or registered in Guernsey must appoint a local designated manager (also referred to as the designated administrator) which must be licensed by the GFSC. Guernsey has a well-developed fund administration industry, and a local firm usually carries out the functions of the designated manager. However, these functions can be outsourced to a third party (whether local or foreign). In those cases, the local designated manager remains primarily responsible to the GFSC, and must comply with the GFSC's guidance on outsourcing when considering and monitoring those appointments. Designated managers must comply with the:
 - Licensees (Conduct of Business) Rules 2016 (COB Rules);
 - Licensees (Capital Adequacy) Rules 2010 (CA Rules).

The COB Rules include provisions dealing with the following:

- Compliance arrangements, including monitoring and employee training.
- Record keeping.
- Categorising clients.
- Suitability of transactions for clients and disclosure of information to clients.
- Timely execution and best execution.
- Dealing with client assets.
- The timing and content of contract notes relating to transactions.
- Conflicts of interest.
- Events to be notified to the GFSC.

The CA Rules specify the level of financial resources, liquidity and insurance that a licensee must maintain, as determined by reference to their business type, historical turnover and risk profile.

It is common for a foreign manager to perform the investment management role, and a local designated manager to perform the administration role.

Foreign funds. A Guernsey licensee providing management, administration or custody services to open-ended foreign funds must comply with the Licensees (Conduct of Business and Notification) (Non-Guernsey Schemes) Rules 1994 (see *Question 5, Open-ended retail funds*).

Other key requirements. No further key requirements.

Closed-ended retail funds

Authorisation/licensing/registration requirements. See above, *Open-ended retail funds*.

Other key requirements. See above, *Open-ended retail funds*.

9. Are the different types of retail funds typically actively managed or passively managed? Or can they be either?

The different types of retail funds are typically actively managed. However, the regulatory framework permits funds to be either actively or passively managed.

MARKETING

10. Who can market retail funds?

Guernsey retail funds

A Guernsey authorised or registered fund can be marketed in Guernsey:

- By a Guernsey entity which is licensed by the GFSC under the POI Law (under a POI licence).
- By persons who are not Guernsey bodies or persons ordinarily resident in Guernsey (Non-Guernsey Persons) whose main place of business is in one of the countries or territories specifically designated by the GFSC as affording "adequate protection" to investors. In this case, the promotion must only be made:
 - to persons holding a licence under a designated list of Guernsey regulatory laws;
 - in the manner in which the person making the promotion would be permitted to market the relevant fund in their home country;
 - following written notice to the GFSC of the date from which the marketing will be carried on.
- On a reverse solicitation basis without the need for a POI licence or notification.

Foreign retail funds

Non-Guernsey funds can be marketed in Guernsey (without the need for the fund to be authorised by or registered with the GFSC). This can be done by:

- POI licensees and Non-Guernsey Persons, where the scheme is authorised under the law of a country or territory specifically designated by the GFSC as affording "adequate protection" to investors and the marketing is conducted in a manner that would be permitted in that designated country or territory and (in the case of a Non-Guernsey Person) following notification to the GFSC and payment of a fee. This exemption covers certain categories of funds that are authorised in the UK, Jersey, the Isle

of Man and the Republic of Ireland as well as EU alternative investment funds.

- Non-Guernsey Persons whose main place of business is one of the countries or territories specifically designated by the GFSC as affording "adequate protection" to investors. In this case, the promotion must only be made:
 - to persons holding a licence under a designated list of Guernsey regulatory laws;
 - in the manner in which the person making the promotion would be permitted to market the relevant fund in their home country;
 - following written notice to the GFSC of the date from which the marketing will be carried on.
- On a reverse solicitation basis without the need for a POI licence or notification.

11. To whom can retail funds be marketed?

Open-ended retail funds

The following restrictions apply:

- **Class A funds.** There are no restrictions.
- **Class B funds.** There are no restrictions.
- **Class Q funds.** These non-retail funds can only be marketed to qualifying professional investors (see *Question 5, Open-ended retail funds*).
- **Funds authorised using the fast-track QIF application process.** These funds can only be marketed to qualified investors (applicable to Class B funds and Class Q funds only) (see *Question 5, Open-ended retail funds*).
- **Registered funds.** There are no restrictions.

Closed-ended retail funds

The following restrictions apply:

- **Authorised funds.** There are no restrictions.
- **Funds authorised using the fast-track QIF application process.** Qualified investors only.
- **Registered funds.** There are no restrictions.

Foreign funds

Certain funds authorised in the UK, Jersey, the Isle of Man or the Republic of Ireland, as well as EU alternative investment funds can be promoted in Guernsey without being authorised or registered in Guernsey (see *Question 10, Foreign retail funds*). Guernsey regulations permit these funds to be marketed in the same manner in which such funds can be marketed in the designated country or territory in which they are authorised.

ASSETS PORTFOLIO

12. Who holds the portfolio of assets? What regulations are in place for its protection?

Open-ended retail funds

All open-ended funds authorised or registered in Guernsey must appoint a local designated custodian or trustee, who must be licensed by the GFSC. Irrespective of the type of fund, the custodian or trustee must be:

- Independent of the designated manager and investment manager.

- Where the fund is a company, independent of the company and its directors.

Designated custodians/trustees must comply with the Licensees (Conduct of Business) Rules 2016 and the Licensees (Capital Adequacy) Rules 2010.

Institutional or expert investor hedge funds can be permitted to appoint a foreign prime broker rather than a local custodian or trustee, who 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.

Closed-ended retail funds

Closed-ended funds are not required to appoint a designated custodian or trustee. However, the GFSC must be satisfied that the assets of the fund are adequately safeguarded. This can involve the appointment of a local custodian or trustee (or a foreign custodian or trustee), or it can involve some other form of safeguarding arrangement. The designated manager can provide safekeeping facilities.

INVESTMENT AND BORROWING RESTRICTIONS

13. Are there any investment or diversification restrictions for retail funds? If so, what are they?

Open-ended retail funds

Guernsey law only sets out restrictions on investment and borrowing powers for Class A authorised open-ended funds. The Class A Rules contain restrictions that apply to all Class A funds, such as:

- Requirements designed to ensure efficient portfolio management.
- Rules regulating the use of stock lending.
- Restrictions on the circumstances in which the fund can hold cash.
- A requirement that borrowing is on a temporary basis and does not exceed 10% of the value of the fund's property.

In addition, the Class A Rules include specific restrictions which apply to certain categories of investments.

The investment restrictions vary, depending on the type of fund and the nature of the investment. All other forms of open-ended retail fund must disclose the investment and borrowing limits that apply, but no specific restrictions are prescribed.

Closed-ended retail funds

All forms of closed-ended fund must disclose the investment and borrowing limits that apply, but no specific restrictions are prescribed.

14. Are there borrowing restrictions or conditions for retail funds? If so, what are they?

Open-ended retail funds

See *Question 13, Open-ended retail funds*.

Closed-ended retail funds

See *Question 13, Closed-ended retail funds*.

Redemption of interests

15. Can participants redeem their interest? Can the manager or operator place any restrictions on the issue and redemption of interests in retail funds? Are there any restrictions on the rights of participants to transfer or assign their interests to third parties?

Open-ended retail funds

Restrictions on redemption of interest. For Class A funds, the issue or redemption of interests can only be suspended by the manager if the custodian or trustee considers that "due to exceptional circumstances there is good and sufficient reason to do so, having regard to the interests of holders" (*Rule 7.2.1, Class A Rules*). The fund documents can specify a minimum number, or value, of interests that can be redeemed, and can specify a minimum holding. If a redemption request does not comply with those minimums, the request can be refused.

For all other types of fund, managers are free to impose restrictions on the issue and redemption of interests, but the circumstances in which these arise must be clearly disclosed in the fund documents. New restrictions for redemptions cannot generally be imposed (and existing restrictions cannot be increased) without giving existing holders an opportunity to exit on the old terms.

Liquidity restrictions typically included in the fund terms include quantity-based restrictions (based on a set percentage of net asset value) and in extreme market situations resulting in illiquidity and pricing difficulties.

Restrictions on rights to transfer or assign interests to third parties. Restrictions on the transfer of interests would normally be imposed for both open-ended and closed-ended funds to ensure that interests are not transferred to any investor whose circumstances would cause the fund to breach any securities laws or to suffer any adverse tax consequences, or if the transfer would result in any investor holding less than the specified minimum holding for the fund.

Units or shares in Class A funds and Class B funds must be freely transferrable. For all other types of fund, restrictions can be imposed. Interests in Class Q funds and QIFs cannot be transferred to persons who are not eligible to invest in such funds (see *Question 11, Open-ended retail funds*). The manager, the fund and its directors must take all reasonable steps to ensure that interests in Class Q funds are not owned by ineligible investors. The designated manager of a QIF must be satisfied that effective procedures are in place to ensure that interests in the QIF are not owned by ineligible investors.

Closed-ended retail funds

Restrictions on redemption of interest. The manager or operator can impose restrictions on the redemptions of shares. Holders of interests in closed-ended retail funds have no right of redemption in any event.

Restrictions on rights to transfer or assign interests to third parties. Restrictions can be imposed. Interests in QIFs cannot be transferred to persons who are not eligible to invest in a QIF. The designated manager of a QIF must be satisfied that effective procedures are in place to ensure that interests in the QIF are not owned by ineligible investors.

REPORTING REQUIREMENTS

16. What are the general periodic reporting requirements for retail funds?

Open-ended retail funds

Investors. The managers of open-ended funds must prepare the following periodic reports:

- **Class A funds: annual and half-yearly reports.** The annual reports must contain audited accounts and a report by the custodian or trustee. The annual reports must be published within four months of the year end, and half-yearly reports must be published within two months of the end of the half-year period.
- **Class B funds: annual reports.** The reports must contain audited accounts and a report by the custodian or trustee. The annual reports must be published within six months of the year end, and if interim reports are prepared, they must be on a basis consistent with the annual reports.
- **Registered open-ended funds and private investment funds (PIFs): no periodic reporting requirements.** However, the annual report that must be given to the Guernsey Financial Services Commission (GFSC) is usually also given to investors. Every Guernsey company is legally required to lay its accounts before its shareholders at its annual general meeting.

Regulators. The reporting requirements depend on the type of fund:

- **Class A funds.** The manager must provide to the GFSC:
 - reports issued to investors;
 - either an annual notification of any changes to the information contained in the application form, or a confirmation that there are no changes;
 - notification of any changes to the information particulars (which must be reviewed at least once in any 12-month period).
- **Class B funds.** The manager must provide to the GFSC:
 - reports issued to investors;
 - either an annual notification of any changes to the information contained in the application form, or a confirmation that there are no changes;
 - notification of any changes to the information particulars (which must be reviewed at least once in any 12-month period).
- **Registered open-ended funds and PIFs.** The manager must provide to the GFSC:
 - either an annual notification of any changes to the information contained in the application form, or a confirmation that there are no changes;
 - audited annual report and accounts within six months of the year end;
 - a quarterly statistical return;
 - notification of any changes to the information particulars (which must be reviewed at least once in any 12-month period).

Closed-ended retail funds

Investors. The same rules apply as for registered open-ended funds (see above, *Open-ended retail funds: Investors*).

Regulators. The same rules apply as for registered open-ended funds (see above, *Open-ended retail funds: Regulators*).

TAX TREATMENT

17. What is the tax treatment for retail funds?

Open-ended retail funds

Funds. Funds are eligible for tax exempt status (for Guernsey tax purposes), on payment of an annual fee of GBP1,200. Funds with exempt status are not regarded as being tax resident in Guernsey.

Resident investors. The fund must provide the Guernsey director of income tax with details of distributions made to investors resident in Guernsey, or who carry out business in Guernsey through a permanent establishment. In all other respects, the tax treatment is the same as for non-resident investors (see below).

Non-resident investors. The fund does not deduct income tax from any dividends, distributions or interest payable by the fund to investors. There are no death duties, capital inheritance, capital gains, gifts, sales or turnover taxes levied in Guernsey in connection with the acquisition, holding or disposal of interests in funds. No Guernsey stamp duty or stamp duty reserve tax is payable on the issue, transfer, conversion or redemption of interests in funds.

Closed-ended retail funds

Funds. See above, *Open-ended retail funds*.

Resident investors. See above, *Open-ended retail funds*.

Non-resident investors. See above, *Open-ended retail funds*.

REFORM

18. What proposals are there (if any) for the reform of retail fund regulation?

The GFSC has conducted a consultation on a major revision of the regulatory laws, including the POI Law. It is anticipated that the change will result in a rationalisation and consolidation of laws, rather than result in substantial changes to the nature of regulation applicable to funds.

The Class Q Rules are due to be revised, although wholesale changes are not expected.

The Limited Partnerships (Guernsey) Law, 1995, as amended, is due to be revised and updated to enable further flexibility in the use of limited partnerships.

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Professional qualifications. England and Wales, Solicitor, 2000; admitted as an advocate of the Royal Court of Guernsey, 2007

Areas of practice. Corporate; commercial; investment funds.

Recent transactions

- Advised Permira on the launch of Permira VI, Permira VII, Permira Credit Solutions III, Permira Credit Solutions Managed Account, Permira Growth Opportunities and Permira Sigma V.
- Advised Deutsche Beteiligungs (DBAG) on the launch of DBAG Fund VII.
- Advised RTP on the launch of its third venture capital fund.
- Advised M7 Real Estate Ltd on its acquisition of a UK retail parks portfolio from RDI REIT.

Professional qualifications. England and Wales, Solicitor, 2004

Areas of practice. Corporate; commercial; investment funds.

Recent transactions

- Advised Permira on the launch of Permira Credit Solutions Managed Account, Permira Growth Opportunities, Permira Sigma V and Permira VII funds.
- Advised Blossom Capital Limited on the launch of its second venture capital fund.
- Advised Corten Capital on the launch of its maiden private equity fund.
- Advised RTP on the launch of its third venture capital fund.