



Guernsey investment funds update Q1 2024

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Guernsey funds up Q4 2023

The total net asset value of Guernsey funds at the end of Q4 2023 was c. US\$368.2 billion, an increase of c. US\$3.6 billion (+1.0%) over the quarter. Guernsey closed-ended funds increased over the quarter by just under c. US\$3.1 billion (+1.0%) to c. US\$305.2 billion.

The Guernsey-domiciled open-ended sector increased over the quarter by just under c. US\$638 million (+1.0%) to c. US\$63 billion. Encouragingly, within these totals for Guernsey funds, Guernsey Green Funds held a total net asset value of c. US\$7 billion at the end of the quarter.

GFSC updates – clarity on fund authorisation/ registration surrenders and unclaimed monies report

The Guernsey Financial Services Commission (the “**Commission**”) has helpfully issued an [Explanatory Note](#) regarding the surrender of the authorisation or registration of collective investment schemes. The note clarifies the typical circumstances under which the Commission will consider granting consent to the surrender of a scheme’s authorisation or registration.

Separately, the Commission has issued its [report](#) on the Thematic Review of Unclaimed Client Money of Collective Investment Schemes (the “**Thematic**”). The Thematic looked at the value of unclaimed and unallocated monies in the collective investment scheme industry in Guernsey and how these monies are dealt with by the relevant parties. A consultation paper is likely to follow with draft guidance or rules.

Guernsey funds suit Australia – flexible limited partnerships structures with tax advantages

Guernsey is one of the world’s largest offshore finance centres, with a thriving funds industry. 1,343 investment funds and 1,564 sub-funds are currently administered in the island.

There are a number of reasons for this. Guernsey maintains a proportionate, flexible and competitive funds regulatory regime, adopting a risk based approach to ensure that appropriate levels of investor protection are maintained, whilst at the same time avoiding unnecessarily complex or burdensome regulation. Guernsey is politically and fiscally autonomous, with a stable political and legal structure. The legislation governing Guernsey companies, limited partnerships and trusts provides flexible regimes to facilitate the establishment and operation of these vehicles.

There are special considerations for Australian promoters and Guernsey has much to offer. Australian promoters of VC and PE funds have historically utilised a range of domestic fund vehicles including unit trusts, Managed Investment Trusts and Early Stage Venture Capital Limited Partnerships (“**ESVCLPs**”). Notably, the Australian fund toolbox does not include limited partnerships, which are the internationally recognised/ preferred fund structure. Limited partnerships are generally treated as corporate entities for Australian income tax purposes and subject to income tax in their own right, making them unappealing – from a tax perspective – for VC/PE funds. Exceptions apply for ESVCLPs although ESVCLPs can be subject to various legal and investment restrictions (e.g. they are bound to invest in early-stage VC investments only and restricted from making overseas investments).

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In our experience, Guernsey limited partnerships are eligible for treatment as “foreign exempt partnerships” for the purposes of Australian income tax rules, meaning such partnerships can be treated as “flow through” for tax purposes. The benefits of flow through treatment extend to the relevant fund vehicles, the GP LP and any separate carry vehicles established as Guernsey limited partnerships.

As flow through vehicles, we understand that any gains (whether capital or revenue in nature) should retain their character in the hands of the Australian resident limited partners as well international limited partners. Further, to the extent that the gain received by the Australian resident limited partners is deemed to be a capital gain, a capital gains tax discount of up to 50% should be available.

We believe Guernsey limited partnerships are well positioned to meet the requirements of Australian promoters and their investors on account of:

- their preferential tax treatment;
- their ability to attract international investors via an internationally-recognised structure;
- Guernsey’s competitive edge with respect to costs and timings for the establishment and regulation of fund vehicles.

Guernsey limited partnerships should suit Australian promoters looking to establish an international feeder vehicle (i.e. to feed into, or invest in parallel with, existing Australian structures) or to wholly “offshore” the fund structure (i.e. to admit international investors as well as Australian investors into a Guernsey fund structure). For more see our briefing [Why are Australian promoters choosing Guernsey?](#)

Guernsey: An ideal domicile for deal-by-deal structures

A recent article in the Financial Times ([Private equity turns to new fundraising tactics in tough market](#), 21 February 2024) highlights a growing trend we have been seeing for some time: bespoke structures set up for single asset (deal-by-deal) acquisitions.

In our experience, these are used for a variety of reasons, including:

- continuation vehicles, extending the holding period for assets once a flagship fund comes to the end of its life and is required to liquidate its portfolio, thereby providing further time for a sponsor to maximise returns;
- “warehousing”, where an immediately available asset is acquired during the fundraising period for a flagship fund (and often transferred to the flagship fund once fundraising is complete);
- assets that cannot be accommodated within a main fund, whether due to capacity constraints, investment restrictions or otherwise;
- syndication of a desirable single asset amongst investors; and
- key investors requesting bespoke arrangements through which they can invest, outside of flagship funds.

Guernsey is an ideal domicile for such single asset structures, for three key reasons:

Regulation

Single asset vehicles are not regulated as collective investment schemes in Guernsey. Accordingly, neither the vehicle itself nor the entities managing those vehicles will need to obtain any licenses or approvals from the Guernsey Financial Service Commission.

This results in the further advantages of ...

Time

Guernsey vehicles (typically companies and limited partnerships) can be established on a same-day basis (in some cases in as little as 15 minutes), meaning they can meet even the most demanding deal timeline. You won’t need the services of notaries public, apostilles or special stamps to get things done. Our company and partnership laws facilitate quick and effective operation and decision making.

Cost

The absence of regulation means both the establishment and ongoing costs of a Guernsey deal-by-deal vehicle are minimised.

In addition, Guernsey has the benefit of:

- flexible legal structures, bringing greater efficiencies; and
- Guernsey’s cellular vehicles (protected cell companies and incorporated cell companies) are analysed on a “cell-by-cell” basis from a regulatory perspective, meaning that so long as each cell only holds one asset, the cellular vehicle as a whole will not be classified as a collective investment scheme. A protected cell company, for example, can establish a new cell by a simple board resolution, meaning no delays and negligible costs in facilitating an investment.

Guernsey companies can easily migrate if required, and are free to elect to be resident elsewhere, meaning that they can, for example, take advantage of the UK’s Qualifying Asset Holding Company (“QAHC”) regime since a Guernsey incorporated company is suitable as a UK QAHC where it elects to be UK tax resident.

Guernsey companies are also ideal as listing vehicles, and continue to be the domicile of choice for non-UK companies listing on the main market of the London Stock Exchange and the Alternative Investment Market.

Beneficial ownership information

On 13 December 2023, the Crown Dependencies published a [joint commitment](#) and associated [press release](#) acknowledging the importance of access to accurate and up-to-date beneficial ownership information in combatting financial crime in all its forms, and detailing plans for the extension of the availability and transparency of beneficial ownership information beyond that currently exchanged with domestic and international law enforcement entities and tax authorities.

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It is proposed that beneficial ownership information will be made available to domestic financial services business and certain other domestic businesses that are required to conduct customer due diligence for AML/CFT/CPF purposes (collectively described as obliged entities), and media and civil society organisations who can demonstrate a legitimate interest in accessing relevant information in order to combat financial crime (in order to align the legitimate interest access to international standards).

Whilst it is anticipated that beneficial ownership information will be made available to obliged entities by the end of 2024, access on the basis of legitimate interest will require more substantial legislative changes, and it is anticipated that proposals will be developed during 2024 and submitted to the parliaments of Jersey, Guernsey and the Isle of Man towards the end of the year.

There is no current intention to make beneficial ownership information available to the public more generally.

AIFMD II and Guernsey funds

With more than a decade having now passed since the Alternative Investment Fund Managers Directive (“AIFMD I”) was adopted, the EU Parliament and the Council of the EU have agreed recently on specific amendments to the text of AIFMD I (as amended) by way of “AIFMD II”. Although AIFMD II does not constitute a total overhaul of AIFMD I, certain of the proposed amendments will impact Guernsey funds (non-EU alternative investment funds (“AIFs”)) marketed into the EU/EEA.

The changes to AIFMD I contemplated by AIFMD II primarily relate to delegation arrangements, liquidity risk management, supervisory reporting, provision of depositary and custody services and loan origination by alternative investment funds (“AIFs”). Guernsey fund managers (non-EU AIFMs) will mainly be impacted by the additional reporting obligations which will apply to Guernsey funds (non-EU AIFs) marketed into the EU/EEA.

The key points of AIFMD II for Guernsey funds and Guernsey managers are:

- AIFMD II will remove the existing FATF Requirement (being that the third country where the non-EU AIFM or the non-EU AIF is established (i.e. Guernsey) is not listed as a ‘Non-Cooperative Country and Territory’ by FATF).

Instead, AIFMD II will provide that access via national private placement regimes will only be available where the third country where the non-EU AIFM or the non-EU AIF is established is not identified as a “**high-risk third**” country pursuant to the EU’s 4th Anti-Money Laundering Directive.

Guernsey has never been listed as a “high-risk third country” by the EU (and is not expected to) and therefore this change should not have any effect on Guernsey funds or Guernsey fund managers.

- Additional, more detailed reporting and disclosure in relation to:
 - a. the possibility and conditions under which the liquidity management tools might be used;
 - b. fees, charges and expenses: (i) borne by the AIFM in connection with the operation of the AIF that will be borne by the AIF and (ii) directly and indirectly borne by investors;
 - c. the composition of the originated loan portfolio;
 - d. the current risk profile of the fund, including the market risk, liquidity risk, counterparty risk, other risks including operational risk and the total amount of leverage employed by the fund; and
 - e. delegation arrangements.

Furthermore, Guernsey AIFM’s will have to provide information to the Guernsey Financial Services Commission on all markets and instruments and any exposure of each of the AIFs it manages (as opposed to only main instruments and principal markets and exposures provided for under AIFMD I).

Managers of Guernsey funds should familiarise themselves with these additional reporting requirements as they apply to their funds in advance of AIFMD II coming into effect. For more see [Guernsey funds and the AIFMD 2](#).

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