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Guernsey funds: which type to choose?

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The regulatory approval process

The registered fund and private investment fund (**"PIF"**) regimes offer a significantly faster approval process than that of authorised funds (other than QIFs): three days for registered funds and one day for PIFs, relying in each case upon increased due diligence obligations on the part of the fund's administrator.

Authorised Funds which do not satisfy the QIF criteria will be subject to GFSC scrutiny at the outset and, consequently, the authorisation process will take significantly longer than the registration process (typically somewhere between four to six weeks).

Authorised funds which do satisfy the QIF criteria can access the same fast-track (3 day) approval process as registered funds. QIFs, however, are limited in the types of investors they admit (unlike registered funds).

Therefore, other than for funds which meet the QIF criteria, the registered fund and PIF regimes offer a significantly quicker route to market.

Similarities between registered funds, PIFs and authorised funds

Registered funds, PIFs and authorised funds may be established as companies, unit trusts or limited partnerships.

Each scheme must be established with the objective of spreading risk.

Closed-ended funds (of any type) are not required to appoint a custodian and may appoint a custodian or trustee that is domiciled outside Guernsey.

Application and annual fees for the regimes are identical and contain identical conflicts of interest requirements. The GFSC adopts the same (existing) policy of selectivity in respect of the regimes.

The administrator of an authorised fund, registered fund or PIF must submit to the GFSC, within six months of the end of each financial year, the audited annual report and accounts together with any principal documents or other agreements which have been amended (or, in the case of authorised schemes, materially amended).

The requirement to file quarterly statistical information is identical under both regimes.

The administrator of every authorised fund, registered fund or PIF must notify the GFSC in writing annually of any changes in the information contained in the application form submitted for approval of the fund.

Difference between registered and authorised funds

Notification

The administrator of an authorised fund must give immediate written notice to the GFSC of any proposed change to or material alteration of a comprehensive list of constitutive documents, principal parties, principal agreements and principal terms of the fund.

The equivalent requirements of the RCIS Rules and the PIF Rules are shorter, requiring immediate notifications in respect of any proposed change of the designated administrator or designated custodian/trustee, as well as any proposal to reconstruct, amalgamate, terminate prematurely, wind up or extend the life of the scheme.

Notably, all of the regimes only require notification of these matters to the GFSC. They do not explicitly require GFSC consent to the proposed changes (although any proposed change to the administrator or custodian (where relevant) requires GFSC consent under both the authorised regime and registered regimes).

Disclosure

The disclosure rules differ between the authorised fund and registered fund regimes (note that the PIF Rules do not require a prospectus to be produced. Notable differences include:

- the requirement for a registered fund to disclose details of significant beneficial ownership interests (meaning 15% or greater) in the fund, the designated administrator, the designated custodian or the designated trustee (if the fund is open-ended) the general partner (in the case of a limited partnership) and the trustee (in the case of a unit trust); and
- the requirement for the information particulars of a registered fund to contain an explicit responsibility statement stating that the directors, general partner, manager or trustee (as appropriate) have taken all reasonable care to ensure the accuracy of the information particulars.

The market standard of disclosures in offering documentation probably means that there is little in practice to distinguish between the two regimes.

Market perception

As authorised funds which are not QIFs are subject to GFSC scrutiny at the outset, and because of the more stringent regulatory requirements imposed on authorised open-ended funds, there has been a perception that authorised funds are subject to a higher level of regulation than registered funds.

However, given the great importance the GFSC attaches to the scrutiny of the fund conducted by administrators of registered funds – and the level of scrutiny the administrators as a consequence undertake – we do not consider this perception to reflect the reality and do not consider either regime as being more heavily or "better" regulated than the other.

We do, however, consider that registered funds and PIFs offer a significantly more efficient means to market, given the three day approval timeline (one day for PIFs) regardless of the categorisation of the investors to whom they are marketed (QIFs may enjoy a three day approval but they are only marketable to a restricted range of "Qualified Investors").

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