

Guernsey registered funds

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Registered funds are one of the two types of Guernsey funds¹.

The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended (the "POI Law") grants the Guernsey Financial Services Commission (the "GFSC") the ability to develop different classes of registered funds and determine the rules applicable to such classes.

Classes of registered funds

There are currently three classes of registered fund:

- funds registered under The Registered Collective Investment Schemes Rules 2018 (an "RCIS Fund"; the "RCIS Rules");
- funds registered under The Private Investment Fund Rules 2016 (a "PIF"; the "PIF Rules"); and
- funds registered as a "Manager Led Product" (an "MLP").

There are no restrictions on the type of investors who are able to invest in registered funds. There is no limit to the number of people to whom registered funds may be marketed, and (other than PIFs) no limit to the number of investors in registered funds.

Each of the three classes of registered funds can be open-ended or closed-ended.

The registration process

Registered funds are registered with the GFSC. They receive their registration following a representation of suitability from the administrator (a Guernsey body holding a POI Law licence, who scrutinises the fund and its promoter in lieu of the GFSC and takes on the ongoing responsibility for monitoring the fund).

¹ The other being authorised funds

The registered fund regime therefore shifts responsibility for compliance with the applicable legislation on to the POI Law licensee.

The POI Law licensee (the administrator) warrants to the GFSC in the relevant registration document that the promoter of the fund is suitable and (where applicable) that the fund documentation is appropriate and satisfies regulatory requirements. The GFSC will issue the registration in reliance upon those warranties.

Although it does not scrutinise the fund, the GFSC will scrutinise the entity giving the warranties to ensure that they are correctly made (i.e. backed up by appropriate documentation). The GFSC attaches great importance to this. It expects there to be documentary evidence to support the warranties being made and for the person making those warranties to be able to produce such evidence immediately at the request of the GFSC. Applicants who cannot substantiate their applications will be excluded from participation in the registered funds self-certification programme.

RCIS funds

Under the RCIS Rules, the administrator applies for a fund to be registered with the GFSC by completing a Form REG.

The Form REG contains warranties that the administrator has performed sufficient due diligence to be satisfied that the promoter and associated parties are fit and proper, and confirmation that the administrator is content that the disclosures in the fund's prospectus and offering document meet the requirements set out in the Prospectus Rules 2018 and include the GFSC's standard legends.

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The administrator is encouraged to liaise with the GFSC in advance if it has any concerns about the promoter or the fund to avoid any potential delays in the three working day consent.

Upon receipt of the signed Form REG, together with copies of the constitutive documentation, material agreements and the registration fee, the GFSC will register the fund within three working days.

PIFs

The GFSC introduced a new class of registered fund – the Private Investment Fund – in 2016.

This was developed by the GFSC in consultation with the industry. The PIF Rules set out the conditions for the registration and operation of a PIF.

The new regime dispenses with any formal requirements for an offering document in recognition of the special relationship between the manager and the investors in the PIF. This significantly reduces the cost and time for launching a PIF.

The PIF must admit no more than 50 legal or natural persons holding an economic interest in the fund (although there is no “look-through” where an appropriate agent is acting for multiple beneficiaries).

There is no limit on the number of investors to whom the PIF may be marketed. A PIF may not, however, add more than 30 new investors in a rolling 12-month period (ignoring the first 12 months).

As well as an administrator, every PIF must appoint a separate manager, who is also licensed under the POI Law. The manager is the entity the GFSC expects to have a close relationship with investors and is therefore responsible for making certain confirmations and undertakings to the GFSC with respect to the ability of investors to suffer losses. The PIF is predicated on the close relationship between the investors and the manager.

The manager may also act as custodian. A custodian that is not domiciled in Guernsey may be appointed.

The PIF is registered following receipt by the GFSC of a Form PIF signed by both the manager and the administrator (who confirms the accuracy of the statements made by the manager and that – having conducted due diligence – the manager is fit and proper to act as manager). The application is processed within one business day.

No further documentation is required.

If the manager is not already a POI Licensee, the licence is granted by the GFSC (also within one business day) following receipt of the Form PIF (provided that the GFSC is made suitably aware of the principals of the manager by timely delivery of Forms PQ beforehand).

Unlike all other classes of funds (registered or authorised), no conduct of business rules or capital adequacy rules will apply to the licensed manager.

There has, as anticipated, been huge demand for PIFs given the number of funds established in Guernsey which are essentially private.

MLPs

Guernsey's Manager Led Product regime was adopted in anticipation of the extension to Guernsey of the third-country passport under the Alternative Investment Fund Managers Directive.

The regulatory focus of the MLP regime is on the investment manager (the AIFM) rather than the fund (i.e. the fund is not subject to requirements prescribed by GFSC rules as per the other classes of funds outline in this note) and therefore mimics the regulation adopted by EU Member States, but is entirely “opt in”, at the election of the Guernsey AIFM.

There are currently no rules governing the MLP regime, just a guidance note from the GFSC.

The AIFM will be subject to The AIMFD Rules, 2013, which replicate the requirements of the AIFMD. These rules are designed to facilitate the use of the third-country passport extension.

Currently, the passport extension has not been extended to third-country AIFMs, and is unlikely to be extended until such time as Brexit is resolved.

Currently there is little cause for the use of the Manager-Led Product, as national private placement regimes provide adequate access to these markets without the additional regulatory burdens of The AIMFD Rules, 2013.

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PLEASE NOTE

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