CAREY OLSEN

The Private Investment Fund regime (PIF)

Service area / Investment Funds

Location / Guernsey

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On 16 November 2016 the Guernsey Financial Services Commission (the "Commission") approved the introduction of a new classification of fund known as the Private Investment Fund ("PIF"). This new category of fund was developed by the Commission in consultation with industry.

No prescribed disclosures

The new regime dispenses 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 reduces the cost and processing time for launching a fund.

Maximum of 50 investors

The PIF, which can be either closed or open-ended, should contain no more than 50 legal or natural persons holding an economic interest in the fund. Where an appropriate agent is acting for a wider group of stakeholders such as a discretionary investment manager or a trustee or manager of an occupational pension scheme, that agent will be counted as one for the purpose of calculating the number of investors. While there is a limit imposed on the number of investors in a PIF, there is no limit on the number of investors to whom the PIF might be marketed – a feature not available under comparable regimes.

Warranties

Every PIF must appoint a Guernsey licensed manager. The PIF is predicated on the close relationship between the investors and the Guernsey licensed manager. The manager is responsible for making certain representations and warranties to the Commission on the ability of investors to suffer losses.

The application process

Under the new PIF Rules, the fund and all other fund entities (such as associated general partner companies) are registered and licensed against receipt by the Commission of one form (Form PIF) and is processed within one business day. No further documentation is required.

Other key features of the proposed private investment fund regime

Private Investment Funds will only be subject to the Private Investment Fund Rules. The Rules contain requirements for:

- Managing conflicts of interest;
- Submitting annual returns;
- Submitting annual audited accounts within six months of the period end;
- There are no requirements in relation to offering documents and no requirement to lodge the offering document with the Commission. No conduct of business rules will be applied against the licensed manager.

MLPs

The development of the PIF follows closely on the heels of the launch of Guernsey's Manager Led Product (MLP), a regime 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 and therefore mimics the regulation adopted by EU Member States, but is entirely "opt in", at the election of the Guernsey AIFM.

Conclusion

It is anticipated that there will be a huge demand for PIFs given the number of funds established in Guernsey which are essentially private. There have already been a number of enquiries by managers looking to establish PIFs, which means that the fund industry has every reason to be excited about this new product.

As Guernsey's market leading legal adviser to funds, Carey Olsen was closely involved in the development of this new product and has advised on the launch of a number of Guernsey PIFs, including Cairngorm II and GMT Realisation Fund LP.

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