



Investment Funds  
A guide to establishing  
a fund in Guernsey

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## A guide to establishing a fund in Guernsey

The investment funds industry in Guernsey has continued to achieve significant growth in recent years.

Figures from the Guernsey Financial Services Commission (the "GFSC") show that as at 31 March 2020, the net asset value of all funds under management and administration in Guernsey was £267 billion.

The Island has developed into a leading jurisdiction for the establishment of investment funds and a large number of Guernsey funds are listed on the London and other stock exchanges. Funds may also be listed on The International Stock Exchange (TISE), formerly known as the Channel Islands Securities Exchange, where special procedures exist to enable the relatively easy listing of Guernsey and Jersey funds. Please visit [www.tisegroup.com](http://www.tisegroup.com) for further information.

### Fund types

There are a wide variety of funds under management in Guernsey including equities funds, bond funds, money market funds, commodities and futures funds, hedge funds, property funds, feeder funds, umbrella funds, private equity and venture capital funds and emerging markets funds. In addition, there are a large number of institutional investment schemes established in Guernsey which have become

increasingly popular for use as special purpose vehicles in asset securitisation, real property and other specialised schemes.

### Modern legislation

The growth of the investment funds industry in Guernsey is attributable in part to the policies of the Guernsey authorities and the flexibility of the regulatory system. Growth is also attributable to the high quality of services available in Guernsey in relation to fund management and custody.

The Protection of Investors (Bailiwick of Guernsey) Law, 1987 (as amended) (the "POI Law") sets up a modern statutory structure for the regulation and administration of collective investment schemes in Guernsey. The law provides a framework for investor protection whilst retaining the flexibility to adapt quickly to changing market conditions.

### The Guernsey Financial Services Commission

The GFSC seeks to maintain Guernsey's reputation for probity in the international financial community and its general duty to protect and enhance the Bailiwick's reputation is reflected in its approach to regulation. There is

a policy of selectivity which means that great weight is given to the status of the intended promoters.

Only those of the first rank are encouraged. Normally a demonstrable and favourable track record in the establishment and/or management of collective investment funds is required. Please visit [www.gfsc.gg](http://www.gfsc.gg) for further information.

### International recognition

Guernsey is one of the most established, transparent and well-regulated offshore jurisdictions. Guernsey is a member of the OECD and was placed on the G20 white list of offshore jurisdictions in 2009. It has also obtained designated territory status under the UK Financial Services and Markets Act, 2000 (the "FSMA").

Guernsey's low tax status, proximity to the financial markets of Europe and a sophisticated banking and professional infrastructure have also contributed to the success of the Island as a base for investment funds.

**Regulatory framework**

The establishment and operation of both open and closed-ended investment funds in Guernsey is governed principally by the POI Law together with the rules made thereunder. An open-ended fund is basically defined as a vehicle where investors are entitled to redeem their holdings at a price related to the value of the underlying assets.

A closed-ended fund does not entitle investors to redeem at a price related to the value of the underlying assets although it is possible to structure a fund to permit redemptions at the discretion of the directors or manager.

**POI Law**

Both funds and certain persons providing services to funds are regulated by the POI Law.

In order to provide services such as management or custody, a person must obtain a licence under the POI Law.

Licensees are subject to conduct of business and capital adequacy rules. Funds (whether open or closed-ended) must be authorised or registered before issuing units or shares. All Guernsey funds (whether open or closed-ended) are categorised as either:

- Authorised (i.e. regulated) funds which are subject to ongoing supervision by the GFSC; or
- Registered funds which are not authorised and are subject to a lighter touch regulatory regime.

Factors which may be relevant in deciding between an authorised or a registered fund may include the following:

- Investor preference (whether investors would prefer more or less regulatory supervision);
- Other regulatory or listing authorities (e.g. Euronext) may require the fund to be authorised.

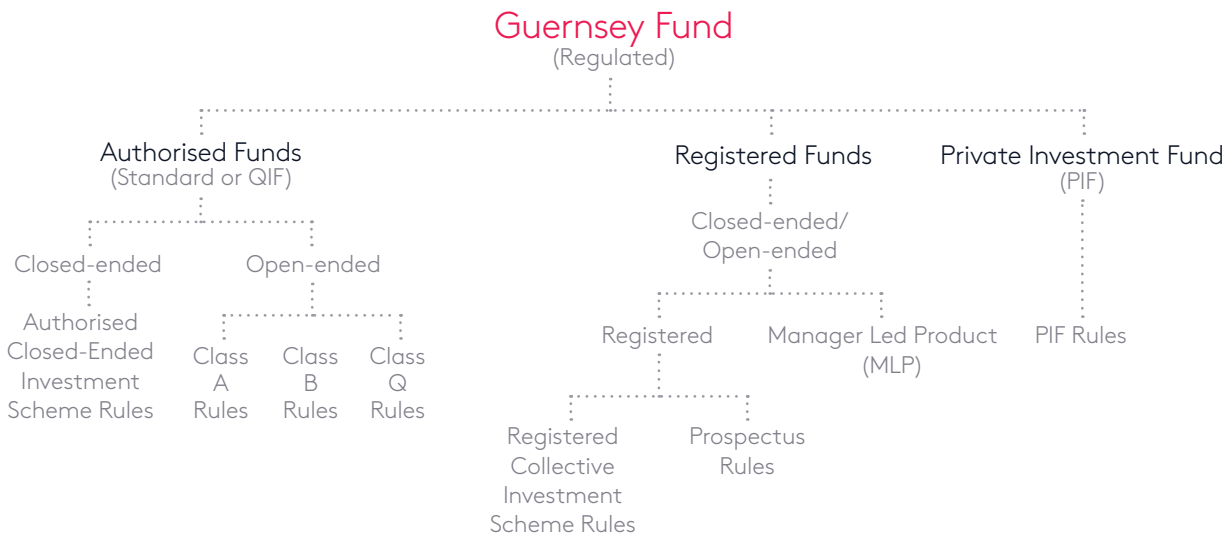
The diagram below demonstrates the various fund types and applicable rules.

**Application procedure for authorised funds**

Applications for authorisation of an authorised open or closed-ended fund are made under the POI Law to the GFSC.

There are three stages in the standard authorisation process: outline authorisation, interim authorisation and formal authorisation. Where new and innovative funds are proposed or some other part of the application process is unsuitable or can be improved, the GFSC can be flexible in its procedures and it will generally be possible to discuss and agree alternative application procedures where necessary.

Promoters should discuss applications with Ogier as soon as possible in the planning and launch of a fund.



### Outline authorisation

Form GFA (Application for Outline Acceptance of a Collective Investment Fund Open or Closed-Ended) is submitted to the GFSC. The form sets out general information regarding the structure of the fund, its investment activities and the parties involved. Form GFA requires the supporting signature of the proposed administrator (and, in the case of an open-ended fund, the proposed trustee/custodian).

At this stage, the GFSC also considers whether the promoter of the fund meets its stated policy as follows:

“The GFSC places great emphasis on the status of an applicant. Essentially the applicant must have a favourable track record in an established jurisdiction which appears free of malpractice, dishonesty or incompetence. Authorisation by another regulatory body will be taken into consideration but does not guarantee a favourable outcome to an application. The ‘track record’ must be in business equivalent to that to be conducted in Guernsey and should be financially successful. Selectivity criteria also apply to the specific nature of the business to be conducted in Guernsey.”

“The GFSC regards the “Promoter” of a fund as the party ultimately responsible for its success. A promoter may, for example, be a fund management company, a new investment boutique or a group of experienced professionals. The GFSC welcomes approaches from promoters of the first rank who have a favourable track record in the establishment and/or management of investment funds.”

Where the promoter of the fund is not known to the GFSC, in order to facilitate the GFSC’s consideration of its suitability as a potential sponsor, the promoter should also submit a completed New Promoter’s Introductory Checklist form together with the requested information on the proposed promoter’s full background and status, including details of any authorisation by a regulatory authority, professional body, investment exchange, clearing house, etc.

Alternatively, the New Promoter’s Introductory Checklist and accompanying information may be submitted on its own or prior to Form GFA. Where the Checklist is submitted on its own, the GFSC will carry out its own due diligence checks and will notify the applicant as to whether it would be willing to consider a formal application from the applicant as the promoter of a Guernsey fund.

The information (which should all be in English) requested by the Checklist includes:

- The full name of the promoter (being the party ultimately standing behind the proposal for new business);
- Details of the promoter’s authorisation by any regulatory authority, including membership number. If the promoter is not itself regulated, details of any regulatory approvals held by its principals may be provided;
- Details of the promoter’s main activities, including its operating history;
- Details of the ultimate beneficial ownership of the promoter, including the full name of any individual and/or entity with an interest of 15% or greater. Such individuals and/or entities will

be required to complete a Form PQ (discussed below) if not already known to the GFSC. It is a requirement to provide details of the name and address of all individuals or entity with any interest of 5% or more but less than 15%;

- Third party evidence of a favourable track record by the promoter in the establishment and/or management of collective investment schemes;
- If the promoter lacks a track record in its own right, evidence of the track record of its principals;
- A copy of the promoter’s latest audited accounts, or latest management accounts if no audited accounts are available or the audited accounts are for a period ending more than six months prior to the date of the application;
- To the extent known, a brief description of the proposed collective investment fund(s) to be established in Guernsey;
- If known, details of any individuals not already disclosed and not already known to the GFSC who will have key roles in the management of the fund (for example, as director of the fund or any management company, or as investment adviser).

The GFSC also takes account of the other parties involved with a proposed fund including administrators, custodians, auditors and lawyers and, in cases where such other parties are not already known to the GFSC, the provision of background information with the Checklist would be helpful.

If the GFSC is satisfied that the fund and promoter appear acceptable, a letter of ‘outline authorisation’ will be issued within a few days.

### Interim authorisation

The final draft prospectus is submitted to the GFSC. Other documents may also be required at this stage as follows:

- Forms PQ (for directors of corporate funds and directors of managers);
- Form APA (for a Class A fund), plus drafts of all constitutive documents;
- Form APB (for a Class B fund);
- Form APQ (for a Class Q fund);
- Form APC (for a closed-ended fund); and
- Application fee.

If the GFSC is satisfied with the detailed submission, 'interim authorisation' is granted, normally subject to amendment or clarification of the draft constitutive documents. Before proceeding to the final stage and usually within 10 business days of receipt of the application, any amendments or clarifications are agreed with the GFSC.

### Formal authorisation

Certified copies of the final constitutive documents are filed with the GFSC together with the following, where relevant:

- Lawyer's certificate (Class A open-ended scheme);
- Lawyer's certificate or manager's certificate (Class B open-ended scheme);
- Manager's certificate (Class Q open-ended scheme); and
- Certified copy of all final constitutive documents and agreements with relevant service providers.

A formal letter of authorisation follows in a matter of days or, if prior arrangement is made with the GFSC, immediately.

Depending upon the complexity of the investment structure and the extent to which the proposals have been finalised prior to the first approach to the GFSC, the whole procedure can be completed within several weeks.

It should also be mentioned that an investment fund established outside Guernsey may obtain authorisation in Guernsey, provided that it and its licensees comply with any relevant provisions of the POI Law.

## Application procedure for registered funds

As an alternative to the authorisation process outlined above, a promoter may instead elect for an open or closed-ended fund to be a registered fund which is registered with, not authorised by, the GFSC. Registration may be obtained from the GFSC within three business days of filing the required documents with the GFSC.

Certain documents must be filed with the GFSC as part of the application for registration including:

- Certified final copy of the prospectus or offer document;
- Certified copy of the constitutive documents and material agreements;
- Forms PQ in respect of controllers and directors of the promoter and fund (as appropriate);
- A certificate from the Guernsey administrator of the fund confirming that, among other matters, the administrator has performed sufficient due diligence to be satisfied that the promoter

of the fund and the associated parties to the fund are fit and proper; and

- The appropriate application fee.

## Qualifying Investor Funds

The GFSC has issued guidance notes in respect of Qualifying Investor Funds which are applicable to open and closed-ended funds, whether authorised or registered. Only 'Qualified Investors' (as defined in the guidance notes) are permitted to invest.

The guidance notes set out due diligence issues that need to be considered by Guernsey licensed service providers to such funds

and the information required to be submitted to the GFSC in support of an application. Relevant authorisation or registration from the GFSC will be forthcoming in three business days.

Qualified Investor Funds are likely to be attractive where the promoter is seeking to establish an authorised fund on an expedited time scale where the minimum investment is US\$100,000.

Qualifying Investor Funds are funds which are registered or authorised following a particular procedure.

## Manager Led Product

Guernsey introduced the Manager Led Product ("MLP") in May 2016. The MLP seeks to regulate the investment manager instead of the underlying investment funds and related vehicles. The regime applies to open and closed-ended funds.

Under the MLP regime:

- a single Guernsey regulated investment manager is required;
- by virtue of regulation of that investment manager, none of the related funds, general partners or managers formed solely for the purposes of those funds will have rules imposed on them by the GFSC; and
- a one business day fast track notification process is available for underlying funds and related vehicles.

Regulatory oversight remains through an appropriately regulated investment manager within the structure, while at the same time investors and promoters benefit from (i) the removal of regulatory

duplication, (ii) a more efficient path to market and (iii) reduced administration fees in respect of those vehicles no longer subject to various rules. The MLP allows one investment manager to absorb all the incidence of conduct of business and capital adequacy rules, while permitting multiple fund structures to exist under its regulatory obligations.

While, to make use of the MLP the investment manager needs to be subject to Guernsey's AIFMD Rules, 2013 (the "Rules"), the Commission has indicated in a guidance note that the investment manager may apply for derogations from the Rules and it is anticipated that these may be significant if required. This would be subject to ensuring reporting requirements are maintained to a sufficient standard and, practically, regulation remains sufficient to market into relevant jurisdictions. This ability to obtain derogations from the Rules is important and relevant at the present time because the third country passport has not yet been made available under the AIFMD. Accordingly if

marketing is taking place into the European Union through national private placement regimes then equivalence is not, at present, required and the manager should not need to subject itself to the full scope of the Rules.

To utilise the MLP, an investment manager will need to be licensed under the POI Law, as well as opt into the Rules (subject to derogations). New investment managers will need to apply for both a licence under the POI Law and for the Rules to apply to them (subject to derogations), while existing investment managers already licensed under the POI Law will need to opt into the Rules (subject to derogations).

A detailed briefing on the Manager Led Product is available on request or online at [www.ogier.com](http://www.ogier.com).

## Private Investment Fund

Guernsey introduced the Private Investment Fund (“PIF”) in November 2016 following a consultation by the GFSC. The consultation found that certain investment funds are characterised by a relationship between management and investors that is closer than that of a typical agent.

A PIF will be subject to the Private Investment Fund Rules 2016 (“PIF Rules”). The PIF Rules contain requirements for managing conflicts of interest, the submission of annual returns notifying changes to the warranties made (see below), the submission of annual audited accounts and certain mandatory characteristics of a PIF. The PIF Rules do not contain any requirements relating to information particulars to be prepared. PIFs may be open or closed-ended.

The PIF requires a licensed manager in respect of the entire fund structure. For example, it is not permitted to have separate advisers in respect of individual cells. Only the PIF Rules will be relevant and no other rules will be applied against the licensed manager.

There is no limit on the number of investors to whom a PIF may be marketed, however a PIF should contain no more than 50 legal or natural persons holding an ultimate economic interest in the PIF, save in the instance where the investment is made by an investment manager acting as agent for a wider group of stakeholders. For example, an investment manager acting as agent for investors in a collective investment scheme or equivalent, pension holders in an occupational pension scheme, or government

funds – whether local or sovereign.

Excepting a period of one year commencing from the date of first subscription, there is a “rolling test” applied on a continuous basis. In the previous twelve months, a PIF can add no more than 30 new ultimate investors. The licensed manager of the PIF is responsible for applying, recording and evidencing such tests.

As part of the applications process the proposed licensed manager is required to make a straight-forward declaration to the GFSC in relation to the ability of the investors in the PIF to assume loss. The GFSC has recently released guidance to assist managers in complying with this requirement.

## Open-ended funds

It is central to the concept of an open-ended fund that it has the power to issue and redeem its own units or shares with the redemption price of the units or shares being calculated by reference to the net asset value of the fund, divided by the number of units or shares then in issue. Whilst the fund will retain discretion as to whom it may issue units or shares, an investor will be entitled to redeem in accordance with its constitutive documents.

Open-ended funds will generally require a Guernsey administrator and a Guernsey custodian who are licensed so to act under the POI Law.

Open-ended funds are authorised

under the POI Law and will be one of three categories:

- Class A, Class B or Class Q.

Alternatively an open-ended fund may be registered.

### **Class A schemes**

A Class A scheme is the nearest equivalent in Guernsey to a UCITS. A Class A scheme subject to the Collective Investment Schemes

(Class A) Rules 2002 (the “Class A Rules 2002”) was eligible up until July 2013 to apply to the UK Financial Conduct Authority, (the “FCA”) under section 270 of the Financial Services and Markets Act 2000

(“FSMA”) to be marketed in the UK.

That position changed as a result of the Alternative Investment Fund Managers Directive (“AIFMD”) and a Class A scheme will now be required to apply on a scheme-by-scheme basis by means of section 272 FSMA.

Whilst Guernsey introduced and published new and updated Class A Rules in 2008, those rules did not become approved or recognised for the purposes of section 270 FSMA. For that reason, they have tended not to be used in practice and the Class A Rules 2002, which have not been repealed, have continued to be applied.



A Class A scheme under the Class A Scheme Rules 2002, will be categorised as a securities fund, a money market fund, a futures and options fund, a geared futures and options fund, a property fund, a warrant fund, a feeder fund, a fund of funds or an umbrella fund. The main characteristics of the Class A Rules 2002 are as follows:

- Investment restrictions for each type of fund are set out in the Class A Rules 2002. They are similar to the FCA Rules and UCITS requirements.
- A Guernsey manager and a Guernsey trustee/ custodian are required.
- The method of valuation of assets is set out in the Class A Rules 2002.
- The fund must be incorporated or constituted under Guernsey law.
- The method of dealing in units is set out in the Class A Rules 2002. The manager may act as principal or agent and may operate a box.
- The expenses and fees which may be charged to the fund are set out in the Class A Rules 2002. All usual fees and expenses are permitted.
- Annual and interim accounts are required.
- Annually reviewed scheme particulars are required.

### Class B schemes

The Collective Investment Schemes (Class B) Rules 2013 (the "Class B Rules"), are intended by the GFSC to be as flexible as possible consistent with meaningful investor protection. The Class B Rules are essentially a codification of best practice, with reliance placed on disclosure. The GFSC also has power to derogate the requirements of any of the Class B Rules. The main characteristics of the Class B Rules are as follows:

- There are no investment restrictions set out in the Class B Rules. The principle of risk spreading applies.
- A Guernsey administrator and Guernsey trustee/ custodian are required.
- There are no restrictions set out in the Class B Rules concerning valuations, dealing or expenses.
- Annual accounts are required.
- Annually reviewed scheme particulars are required.

### Class Q schemes

The Collective Investment Schemes Qualifying Professional Investor Funds) (Class Q) Rules 1998 (the "Class Q Rules") seek to provide a clear and concise set of requirements for the operation of professional investor funds and have been designed to encourage innovation. The Class Q Rules incorporate a measure of flexibility, consistent with meaningful investor protection. Accordingly, the Class Q Rules allow greater discretion in respect of investment restrictions and place more emphasis on disclosure of risks inherent in the investment vehicle.

The manager and directors must take reasonable steps to ensure that units or shares are only held by qualifying professional investors (at the time of investment) which are defined as:

- A government, local authority or public authority;
- A trustee of a trust which has net assets in excess of £2,000,000;
- A body corporate or limited partnership if it or any holding company or subsidiary of it has net assets in excess of £2,000,000; or
- an individual who has, together with any spouse, a minimum net worth (excluding main residence and household goods) of £500,000.

The main characteristics of the Class Q Rules are as follows:

- Only qualifying professional investors may hold units or shares.
- No investment restrictions, valuation or dealing restrictions.
- A Guernsey administrator and a Guernsey trustee/custodian are required.
- Annual reports are required.
- Information particulars must be revised to include any significant change.
- Derogations from the requirements of the Class Q Rules are permitted.

Note that the procedural requirements of a Qualifying Investor Fund are different from the requirements for a Class Q fund and do not necessarily apply to a Class Q fund (please see above).

### Registered

An open-ended registered fund is subject to the Registered Collective Investment Scheme Rules 2018 and the Prospectus Rules 2018. The main characteristics of a registered open-ended fund are as follows:

- The fund must be established with the objective of spreading risk. The criteria for the spread of risk must be specified in the fund's offering document.
- The Prospectus Rules 2018 make provision for disclosures in the fund's offering document.
- There are provisions for both immediate and periodic notifications to the GFSC regarding changes to the fund, as well as financial and statistical information.
- A Guernsey licensed custodian is required (unless a derogation is available).

## Closed-ended funds

An investment vehicle is a closed-ended fund if investors are not entitled to redeem their units or shares at a price related to the value of the underlying assets. Redemptions may be made at the discretion of the directors or manager.

Closed-ended funds have been used for many varied and innovative funds. Such funds may be quoted on any stock exchange, subject to its rules. The structures of such funds may be simple or complex, involving many different entities and classes of security. Closed-ended funds may be authorised or registered.

### Authorised

Authorised closed-ended funds are subject to the Authorised Closed-Ended Investment Schemes Rules 2008. The main characteristics are as follows:

- The fund is authorised and subject to continuing supervision by the GFSC.
- The fund must be established with the objective of spreading risk. The criteria for the spread of risk must be specified in the fund's offering document.
- Specified disclosures to investors must be included in the offering document.

- There are provisions for both immediate and periodic notifications to the GFSC regarding changes to the fund, as well as financial statements and statistical information.

### Registered

A closed-ended registered fund is subject to the Registered Collective Investment Scheme Rules 2018 and the Prospectus Rules 2018. The main characteristics of a registered closed-ended fund are as set out above for registered open-ended funds, save that there is no requirement to appoint a Guernsey custodian.

## Hedge Funds

The GFSC has published framework guidance for the authorisation of hedge funds in Guernsey, including a policy of relaxing certain of the requirements discussed above (e.g. to permit direct appointment of prime brokers). The framework puts Guernsey squarely in the class of jurisdictions which recognises the particular needs of hedge funds and offers a secure, well-regulated home

for alternative investment products. The full text of the framework policy document can be found on the GFSC's website ([www.gfsc.gg](http://www.gfsc.gg)) or we can supply a copy on request.

The framework document referred to above provides that, especially for institutional and expert investor funds, the GFSC will permit a prime broker, regulated in an acceptable

jurisdiction and having substantial net worth, to be appointed without the need for a Guernsey domiciled and licensed custodian. Further, the GFSC will not, for institutional and expert investor funds, insist on complex segregation requirements for prime brokers holding fund assets.

## Companies

Funds may take the form of a company. The incorporation of a company under the laws of Guernsey is by means of registration under The Companies (Guernsey) Law, 2008 (as amended) and the process may be carried out while the terms of the draft offering documents are

being reviewed by the GFSC and, if applicable, any other regulator interested in the incorporation of the fund (i.e. the UK Listing Authority, in the case of a London-listed fund).

There are no authorised share capital or minimum issued share

capital requirements imposed on a Guernsey company.

Share capital may be denominated in any convertible currency and the issue of fractional shares is permitted and shares may be issued at a premium.

Investment companies may have any appropriate share structure from one class to many classes having different rights.

Guernsey law also provides for the

incorporation of protected cell companies. The relevant legislation provides that each class of shares is ring-fenced from the insolvency of the other classes. From this has developed the incorporated

cell company - an arrangement which entails similar ring-fencing but provides that each cell is to be treated as a separate legal person.

## Unit Trusts

In contrast to an investment company, a unit trust is not a separate legal entity as such but a trust arrangement whereby legal ownership of the fund's assets is vested in a trustee, who holds the assets of the fund on trust for the benefit of the unitholders.

The unit trust will be constituted by means of a trust instrument made between a Guernsey trustee company and an independent Guernsey management company.

Typically the management company will be a Guernsey subsidiary of one of the international fund management groups, which will undertake promotion of the scheme by means of publication of an explanatory memorandum relating

to the offer of units in the trust. The management group will typically also undertake the management and general administration of the trust.

The subscription proceeds will be paid to the trustee which, thereafter, will act as the custodian of the investment assets of the fund. In addition, the trustee will generally supervise compliance by the manager with its obligations under the trust instrument.

It is usual for the trust instrument to contain, for example, provisions regulating the issue, redemption and valuation of units as would, in the case of shares of an open-ended investment company, be found in its articles of incorporation.

In order to obtain regulatory authorisation or registration, the explanatory memorandum in connection with the offer of units and the trust instrument and other constitutive documents of the fund must be approved by the GFSC. The trust instrument will also contain provisions for the appointment and removal of the trustee and the manager, their duties and remuneration, borrowing powers, investment restrictions and provisions for the winding-up of the trust.

For most practical purposes a unit trust scheme will operate and be regulated in the same manner as a corporate investment fund.

## Limited Partnerships

The Limited Partnerships (Guernsey) Law, 1995 (as amended) provides a comprehensive statutory framework for the establishment and operation of limited partnerships in Guernsey.

A limited partnership may be an appropriate structure for a number of different purposes. A principal use will be to provide an additional form of investment vehicle for

mutual funds, in particular for the venture capital industry. A limited partnership will also be an attractive structure for various tax planning purposes.

In order to establish a limited partnership, following execution of a limited partnership agreement, the general partner executes a declaration of partnership. The

limited partnership will come into existence upon registration of the declaration by the Registrar of Limited Partnerships.

The general partner will manage the business of the partnership and have unlimited liability for its debts. The liability of investors taking interests as limited partners (and who do not participate in the

management of the partnership) will be limited as to the amount of their investment. In recent years the limited partnership has been particularly favoured for use in private equity and venture capital projects, as the partnership is generally treated as being fiscally transparent.

A Guernsey registered limited partnership may elect to have separate legal personality. For the purposes of Guernsey's Income Tax Law, a Guernsey registered limited partnership (meaning a limited partnership either with or without legal personality) is neither a 'person' nor a 'company'. Therefore,

the partners (whether limited or general) fall to be examined for tax purposes in their own right whether or not the partnership has elected to have separate legal personality.

## Limited Liability Partnerships

The Limited Liability Partnerships (Guernsey) Law, 2013 ("LLP Law") provides the framework for the establishment of limited liability partnerships in Guernsey. Limited liability partnerships combine the flexible features of general partnerships with the benefit of limited liability for the LLP members. As such, it has become a vehicle of choice for professional persons in jurisdictions in which it has been introduced. The flexibility of the LLP means that it may be used in a variety of commercial contexts.

The LLP has a legal personality separate from its members and will own the business's assets and be

liable for its own debts. Members of an LLP may be bodies corporate or individuals.

Every LLP must have a written members' agreement but the contents are not prescribed, thereby allowing considerable organisational flexibility. However, unless otherwise included within the members' agreement, the LLP Law provides that all members are entitled to share equally in the profits of the LLP and may take part in the conduct and management of the LLP.

The LLP Law expressly provides for the conversion of a Guernsey

general partnership into an LLP and sets out a procedure for so doing. In addition, there are provisions in the LLP Law permitting certain LLPs incorporated under the laws of jurisdictions other than Guernsey to migrate to Guernsey and become registered as an LLP and to migrate out of Guernsey to another jurisdiction. The LLP Law requires, for both migrations in and out, the consent of the Guernsey Financial Services Commission in the context of regulated businesses.

A detailed briefing on Limited Liability Partnerships is available on request or online at [www.ogier.com](http://www.ogier.com).

## Recognised Funds and AIFMD

The ability of offshore investment funds to offer shares directly to investors in the UK is restricted by the FSMA and as a result of AIFMD.

The FSMA provides a procedure under section 272 for individual recognition of investment funds established in countries or territories outside of the EEA which meet the

applicable adequacy tests to be considered as UCITS equivalent. Section 270 FSMA, under which Guernsey obtained designated territory status for Class A schemes making them eligible for recognition in the UK, no longer applies.

Under section 272 FSMA, a detailed application must be submitted to

the FCA together with the required supporting documentation and fee. Certain facilities must be maintained in the UK, for example, to enable inspection of scheme documents by any member of the public.

Under AIFMD, the National Private Placement Regime ('NPPR') applies until such time as a marketing

passport for Third Countries is made available. In July 2016, ESMA announced its recommendations to grant Guernsey a marketing passport. Following the Brexit vote, it is now increasingly unclear if and when a marketing passport will be made available to Third Countries.

NPPR permits the marketing of non-EU alternative investment funds to EU investors, subject to national law and regulation. In addition, certain conditions set out in AIFMD must be met. Those conditions include the need for supervisory cooperation agreements to be entered into between the GFSC and regulators in the relevant EEA countries in which the marketing is to take place.

Guernsey was well prepared for the introduction of AIFMD and the marketing of Guernsey investment funds to EU investors after 22 July 2013. The required supervisory cooperation agreements are in place with regulators in 27 out of 31 EEA countries.

Marketing Guernsey investment funds under NPPR in the UK involves (among other things) compliance with the UK Alternative Investment Fund Managers Regulations 2013.

The GFSC has issued AIFMD Marketing Rules to help ensure compliance by Guernsey investment funds and their managers with the AIFMD NPPR conditions. New

opt-in AIFMD Rules have also been introduced. This allows Guernsey fund managers and depositaries to opt in to a set of Guernsey rules which are aimed at achieving compliance with AIFMD, should they wish to do so.

For further information in connection with AIFMD and Guernsey investment funds, please refer to our briefings on this topic, which are available upon request, or contact a member of the Ogier funds team in Guernsey or your usual Ogier contact.

## Country status

A list is maintained on the GFSC website at [www.gfsc.gg](http://www.gfsc.gg) of those countries where agreement has been reached for the marketing of stated types of Guernsey investment funds subject to specified conditions. Those countries include the following non-European Economic Area ("EEA") countries:

### **Australia**

Agreement signed by ASC and GFSC June 1996 to allow Class A schemes to be marketed in Australia.

### **Hong Kong**

Class A schemes are granted certain waivers from standard HK regulatory requirements. Class B schemes are considered on a case by case basis.

### **Japan**

FCA-recognised Class A schemes are eligible for public marketing. Class B schemes may also be marketed to Japanese investors subject to regulatory approval.

### **South Africa**

Guernsey authorised funds are required to enter into a representative agreement or maintain a representative office and to satisfy the FSB that they are regulated to an equivalent standard to South Africa funds. Class A schemes and also some Class B schemes have been accepted.

### **Switzerland**

Equivalency of Guernsey regulation/supervision to Swiss standards was recognised by SFBC in January 1994. Applications to SFBC must be made by a body holding the appropriate licence. A Swiss bank must be appointed as paying agent.

As regards EEA countries, the GFSC maintain a separate list under its AIFMD FAQs, which should be referred to for the up to date position on the NPPR arrangements for specific EU/EEA member states.

## Selection of fund structure

Investment funds under management in Guernsey take a number of different forms and new types of fund structures are constantly being developed. However, in practice the types of investment vehicle most often encountered are closed-ended and open-ended companies and unit trusts and closed-ended limited partnerships.

The prospective investor at whom the investment product is to be targeted will be an important consideration in determining the selection of the appropriate form of investment vehicle. Where, for example, a retail fund is to be offered to the public in the UK a unit trust may be the most familiar structure, whereas if the fund is to be marketed in Europe or in the US, an open-ended mutual fund company may be the appropriate form. It is also worth noting that Japanese investors have tended to show greater interest in the trust form because of the flexibility of a unit trust in enabling distributions to be made out of capital. For a complex investment product

having a high minimum investment threshold which is to be offered to investment institutions, a limited partnership may be the appropriate form.

While regulatory and marketing considerations are important in selecting whether the corporate, trust or limited partnership form is used, the fiscal implications for investors will generally be the determining factor. The promoters of the investment fund will generally wish to ensure that, at the least, the scheme achieves tax neutrality, whereby an investor will be in the same tax position whether he makes his investment directly in the underlying assets or through the medium of the investment fund.

In most tax jurisdictions the corporate form, by virtue of being a separate legal entity, is treated as being fiscally non-transparent, the fund's tax position being determined without regard to its shareholders. However, it has been possible to structure companies as entities which satisfy the relevant conditions within other jurisdictions for fiscal

transparency. A limited partnership on the other hand will, for tax purposes, generally be treated as being transparent and the total tax take will be determined by the partners' individual circumstances. For fiscal purposes a unit trust has mixed tax characteristics. In certain jurisdictions it may be treated as being transparent for income and non-transparent for capital gains distributions. The revenue authorities may regard income in the hands of the trustee as the income of the unit-holder.

Accordingly, for certain types of investments in certain jurisdictions, it may be advantageous for investors to use a trust vehicle. However, by virtue of the greater flexibility provided by the corporate form for listing on stock exchanges and the wider acceptability of companies for marketing purposes, the majority of investment funds established in Guernsey in recent years have been closed-ended and open-ended investment companies.

## Taxation and charges

Guernsey offers a location for investment funds which does not impose its own tax burden on an investment fund or its investors.

Under current legislation in Guernsey, there is no capital gains tax, capital transfer tax, wealth tax, or estate or inheritance tax payable in respect of the issue or realisation of shares in a closed-ended or open-ended company, units in a unit trust or interests in a limited partnership. There is no Guernsey corporation

tax, profits tax or withholding tax applicable to or payable by a closed ended or open-ended company, unit trust or partnership or their respective shareholders, unit-holders or partners. No stamp duty is payable on the transfer of shares or units in an investment fund and Guernsey levies no annual taxes or charges by reference to a company's issued share capital.

A Guernsey investment fund company will, upon application

to the Director of Income Tax in Guernsey, normally qualify for exempt status for income tax. Accordingly, distributions made by a Guernsey investment fund company may be paid to shareholders without deduction of any Guernsey tax, notwithstanding that central management and control of the company is exercised from within Guernsey. The Guernsey investment fund company will, however, be required to report to the Guernsey Director of Income Tax any

distributions made to holders who are resident in Guernsey.

The conditions for the grant of tax exempt status are that the company files the appropriate election to be exempt from tax and pays a flat rate annual charge of £1,200, irrespective of the level of its profits. If an exempt company election is made there is no requirement on the company to file tax returns.

As there is no capital gains tax in Guernsey it is possible to accumulate income and realised gains tax-free in Guernsey.

A standard fee for incorporating a company is £100 (note that the fees of a Corporate Service Provider will be in addition to this incorporation fee).

Registration fees of £350 are payable upon registration of a limited partnership.

There are no taxes, registration fees or duties payable to the Guernsey authorities in respect of the establishment or administration of a unit trust.

Neither the trustee nor the assets of a unit trust will be liable to Guernsey income tax on the income of a

unit trust arising outside Guernsey (including, by concession, bank interest arising in Guernsey), but the manager will be required to report to the Guernsey Director of Income Tax any distributions made to holders who are resident in Guernsey.

Although no stamp duty or similar tax is payable on the issue, transfer or redemption of shares in a company, units of a unit trust or limited partnership interests, a Guernsey grant of probate or administration (each of which may incur ad valorem fees) may be required to deal with the shares, units or partnership interests of a deceased holder. Guernsey is free from all exchange control restrictions.

It should be mentioned that the basic rate of income tax on company profits will be 0%. However, certain regulated businesses will be subject to income tax at 10%.

Both open and closed-ended funds must pay application and annual fees to the GFSC. According to the GFSC's website at [www.gfsc.gg](http://www.gfsc.gg) the main current fees are as set out over the page:

## **Licensee Fees**

### **Application Fee**

£2,322 per licensee (one-off payment)

### **Annual Fee**

#### **Designated Manager/Custodian (open-ended funds)**

£3,322 per licensee (annually)

#### **Designated Manager (closed-ended funds)**

£3,322 per licensee (annually)

#### **Principal Manager (open-ended or closed-ended funds)**

£1,661 per licensee (annually)

#### **Manager of Closed-Ended Fund**

£1,661 per licensee (annually)

### **Other Licensees**

£3,322 per licensee (annually)

## **Open-Ended Funds**

### **Annual fee - scheme**

£3,435 per scheme (annually)

### **Application fee - scheme**

£3,435 per scheme

### **Annual fee per additional class**

£221

### **Application fee - new class of umbrella/multi class scheme**

£721 per scheme

## **Closed-Ended Funds**

### **Application fee - fund**

£3,435 per fund (one-off payment)

### **Annual fee - fund**

£3,435 per fund (annually)

We can advise up-to-date fees on request or check the GFSC's website.

Legal fees and other start-up costs will be incurred in the year of inception but it is usual practice for these to be amortised over a five year period.

## FATCA and CRS

The object of the US Foreign Tax Compliance Act ("FATCA") regime is to require "foreign financial institutions" ("FFIs") to report to the IRS US persons' direct and indirect ownership of non-US financial accounts and non-US entities. An offshore investment fund will constitute a FFI for this purpose.

On 13 December 2013, the United States of America and the States of Guernsey entered into an intergovernmental agreement ("IGA") relating to the automatic exchange of information with the US. This IGA was successfully amended on 9 and 14 October 2015. An IGA has also been entered into between the United Kingdom and Guernsey on 22 October 2013, which has similar reporting requirements to the ones contemplated by the US IGA.

Jersey and Guernsey (together with the Isle of Man) have jointly released revised draft guidance notes dated 31 March 2014 (the "Guidance Notes") relating to the automatic exchange of information with the UK and the US under the IGAs entered into in 2013 by each Crown Dependency, in order to improve international tax compliance and the implementation of US FATCA.

The revised Guidance Notes (on which the local finance industry has had the opportunity to comment) are intended to provide practical assistance to both business and the Crown Dependency staff who deal with entities affected by the UK and US IGAs and seek to clarify any areas of uncertainty as to the operation of the registration and reporting provisions set out in the UK and US IGAs.

If you have any queries in respect of how the IGAs will operate in Jersey and/ or Guernsey, then please do contact a member of Ogier's funds team or your usual Ogier contact.

Guernsey has also signed up to the Common Reporting Standard (CRS). This means that from January 2017, comparable information will start to be exchanged by Guernsey and other signatory jurisdictions. To date, over 100 jurisdictions are signatories including the majority of the OECD countries. CRS will replace reporting under UK FATCA.



## About Ogier

Ogier provides legal advice on the British Virgin Islands, the Cayman Islands, Guernsey, Jersey and Luxembourg law.

Through our global network of offices we cover all time zones and the key financial markets. Our core services are banking and finance, corporate and commercial, dispute resolution, investment funds, private equity and private wealth.

We have long-established relationships with many of the world's leading international financial institutions and professional advisors; specifically we work with all of the leading international accountancy practices,

many of the world's most wealthy families and major investment houses. We are instructed by all the leading global law firms and act for the major banking institutions.

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Ogier provides practical advice on British Virgin Islands, Cayman Islands, Guernsey, Jersey and Luxembourg law through our global network of offices. Ours is the only firm to advise on these five laws. We regularly win awards for the quality of our client service, our work and our people.

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