



A guide to Guernsey investment funds

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In this guide, Investment Funds partner Tim Clipstone explains the Guernsey funds industry and provides an overview of the different types of Guernsey fund vehicles and structures, investment fund regulation and economic substance.

A leading funds domicile

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

Figures from the Guernsey Financial Services Commission (**GFSC**) show that as at 31 October 2023, the net asset value of all funds under management and administration in Guernsey was £288.7 billion.

A large number of Guernsey funds are listed on the London and other major stock exchanges. Funds may also be listed on The International Stock Exchange (**TISE**), Guernsey's internationally recognised stock exchange.

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 administration and custody. Guernsey's approach of zero rating collective investment schemes for income tax, proximity to the financial markets of Europe and a sophisticated banking and professional infrastructure have also contributed to the industry success.

Guernsey is at the forefront of jurisdictions in implementing regulatory standards which encourage investments in climate mitigation and bio-diversity through the Guernsey Green Fund and Natural Capital Fund designations, first promulgated in 2018 and 2021 respectively, predating the EU's SFDR and Taxonomy Directives.

Guernsey fund structures

Types of vehicles available

Guernsey offers limited partnerships, cellular and non-cellular companies, unit trusts and limited liability partnerships (**LLPs**) through which to form the funds and related vehicles which provide robust platforms that are internationally recognised.

Types of investment funds

Guernsey is an attractive jurisdiction for locating closed-ended and open-ended fund vehicles, as well as hybrid evergreen structures.

Guernsey investment funds have multiple uses including as private equity and venture capital funds, hedge funds, secondary market funds, emerging markets funds, infrastructure funds, green funds and natural capital funds.

Funds established in the jurisdiction can be structured as standalone funds, feeder funds into Guernsey or non-Guernsey structures, master funds for non-Guernsey or Guernsey feeders, umbrella funds, parallel funds, follow-on funds and hybrid funds.

Ancillary fund vehicles

Guernsey is popular among investment managers as the location for their ancillary structures, such as carried interest, co-investment and parallel single investment vehicles which are generally unregulated.

Regulation

The Guernsey Financial Services Commission

The Guernsey Financial Services Commission (**GFSC**) is the Bailiwick of Guernsey's financial services regulatory authority. The GFSC seeks to maintain Guernsey's reputation for probity in the international financial community and has a general duty to protect and enhance the Bailiwick's reputation. as an established, transparent and well-regulated offshore jurisdiction. The commission ensures that the Bailiwick's regulatory framework and practices meet international standards and is a committed participant in discussions pertaining to international standards. It does so through membership of, or association with, the following international organisations:

- the International Organisation of Securities Commissions (**IOSCO**)
- the International Association of Insurance Supervisors (**IAIS**), and the Group of International Insurance Centre Supervisors (**GIICS**)
- the Group of International Finance Centre Supervisors (**GIFCS**)

- the Organisation for Economic Co-operation and Development (**OECD**) - through the United Kingdom's membership
- the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (**MONEYVAL**)
- through the Group of International Finance Centre Supervisors, it works with:
 - o the Basel Committee on Banking Supervision (**BIS**)
 - o the Financial Action Task Force (**FATF**) on money laundering

The commission is committed to international regulatory co-operation and is a signatory to the IOSCO Multilateral Memorandum of Understanding as well as the IAIS Multilateral Memorandum of Understanding. It also has numerous bilateral regulatory co-operative agreements in place and, through the European Securities and Markets Authority, has in place Memorandums of Understanding (**MoUs**) covering the Alternative Investment Fund Managers Directive (**AIFMD**) with 27 members of the European Economic Area.

It has also obtained designated territory status under the UK Financial Services and Markets Act, 2000 (**FSMA**) and was placed on the G20 white list of offshore jurisdictions in 2009. In August 2015, the EU Commission confirmed its continued endorsement of Guernsey as a cooperative jurisdiction, which follows on from the OECD also backing Guernsey as a cooperative jurisdiction in 2015.

Protection of Investors

The Protection of Investors (Bailiwick of Guernsey) Law, 2020 (POI Law) provides a flexible and up-to-date statutory framework for the regulation and administration of collective investment schemes and the licensing of service providers to collective investment schemes in Guernsey. The POI Law provides a framework for investor protection whilst retaining the flexibility to adapt quickly to changing market conditions.

Subject to certain exceptions, a collective investment scheme is

Single investor or single asset vehicles commonly fall out of scope of the definition of collective investment schemes.

The Collective Investment Schemes (Compensation of Investors) Rules 1988 (as amended) provide for compensation for investors in Class A schemes of up to £5 million in any year. Subject to this limit, the maximum compensation payable per investor is 90% of the first £50,000 and 30% of the balance of up to £100,000 (ie a maximum total of £60,000). To date, no call has been made on the compensation scheme.

There is no compensation scheme covering investors in Class B schemes, Class Q schemes, authorised closed ended investment schemes, or registered collective investment schemes.

Authorised and Registered Funds

Where a scheme comprises a collective investment scheme, it is subject to certain regulatory requirements and the GFSC has two categorisations of collective investment schemes, being (i) Authorised Collective Investment Schemes and (ii) Registered Collective Investment Schemes.

Authorised funds are collective investment schemes authorised by the GFSC after a substantive review of the fund's terms, promoters and licensees and a determination of their suitability by the GFSC.

Registered funds are collective investment schemes registered by the GFSC following the submission by a Guernsey licensed administrator of a representation that the fund is suitable for registration, having considered the fund terms, its promoter and licensee. In this case, the administrator takes the role of the GFSC in monitoring the fund on an ongoing basis

Factors which may be relevant in deciding between an authorised or a registered fund may include whether investors would prefer more or less regulatory supervision or where other regulatory or listing authorities require the fund to be authorised.

Under the POI Law, the GFSC has issued rules providing for the authorisation or registration of collective investment schemes. The following comprise the most commonly used rules:

Authorised Funds

Closed-Ended

- The Authorised Closed-Ended Collective Investment Scheme Rules 2021 (**ACIS**)

Open-Ended

- The Authorised Collective Investment Schemes (Class B) Rules 2021 (**Class B Fund**)

Registered Funds

Closed-Ended and Open-Ended

- The Registered Collective Investment Scheme Rules 2021 (**RCIS**)
- The Private Investment Fund Rules (2) 2021 which cover:
 - o Route 1 - PIF Manager (**PIF Route 1**)
 - o Route 2 - Qualified Investor (**PIF Route 2**)

o Route 3 - Single Family (PIF Route 3)

Collective investment schemes must be authorised or registered before issuing interests, units or shares.

When considering applications for authorisation or registration, the GFSC further distinguishes between open-ended and closed-ended collective investment schemes.

An open-ended fund is a collective investment scheme where investors are entitled to redeem their holdings at a price related to the value of the underlying assets pursuant to the terms of issue of their fund interests.

A closed-ended fund is a collective investment scheme that does not give investors the right 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.

Marketing

Upon a collective investment scheme being authorised or registered, that scheme can be marketed or promoted to any person, subject to:

- compliance with the specific rules by which it was authorised or registered by the GFSC
- any conditions placed on the authorisation or registration by the GFSC and
- compliance with all applicable regulations and laws of the jurisdiction (outside Guernsey) in which the promotion or marketing is taking place

Listings

Guernsey collective investment schemes are commonly listed on recognised stock exchanges to provide managers with greater access to capital and investors with liquidity. Such schemes are promoted and marketed in accordance with the relevant rules of the market.

In addition, Guernsey has its own recognised exchange, The International Stock Exchange (TISE), on which fund interests are commonly listed.

Marketing in UK

The ability of Guernsey funds to offer fund interests directly to investors in the UK is restricted by the Financial Services and Markets Act 2000 (FSMA).

FSMA provides a procedure under section 272 for individual recognition of investment funds

established in countries or territories outside of the EEA (such as Guernsey) which allows schemes to be marketed to the general public in the UK. Such schemes must meet the requirements of s 272, which include that adequate protection must be afforded to the participants.

Other collective investment schemes intended to be marketed to suitably qualified investors are usually registered under the UK's national private placement regime pursuant to regulations 58 (sub-threshold managers) or 59 (above threshold managers) of the UK AIFM Regulations.

Marketing in the EU

Separately, under the European Union's Alternative Investment Fund Managers Directive (Directive 2011/61/EU) (the **AIFMD**) managers (whether a non-EU AIFM or an EU AIFM) wishing to market and promote Guernsey collective investment schemes (being non-EU AIFs) in an EU member state must register in that member state under the National Private Placement Regime (**NPPR**). The NPPR permits the marketing of non-EU AIFs to EU investors subject to national law and regulation.

Guernsey's access to the NPPR is conditional on appropriate 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 and Guernsey must not be listed as a Non-Cooperative Country and Territory by FATF. The required supervisory cooperation agreements are in place with regulators in 27 out of 31 EEA countries and Guernsey is not so listed by FATF.

In addition to the current conditions to access the EU's NPPR, under AIFMD 2 which is due to come into force in 2026, jurisdictions in which non-EU AIFs are domiciled must not be identified as a "high-risk third country" pursuant to the EU's fourth Anti-Money Laundering Directive. Guernsey is not identified as a "high-risk third country" by the EU.

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.

The GFSC has issued AIFMD Marketing Rules to help ensure compliance by Guernsey investment funds and their managers with the AIFMD NPPR conditions and also has a scheme which allows Guernsey licensees to apply to become recognised as satisfying the "depository lite" requirements for EU AIFMs marketing Guernsey funds in the EU.

POI Licensees

In order to provide services such as administration, investment management or custody of assets to collective investment schemes, a person must obtain a licence under the POI Law. Licensees are subject to conduct of business and capital adequacy rules.

Each authorised or registered collective investment scheme will require a POI law licensed administrator and all open-ended schemes, other than hedge funds and private investment funds (PIFs), require a POI Law licensed custodian.

Hedge funds, while being open-ended schemes, can apply for a derogation from the need for a POI Law licensed custodian, provided they have a suitable non-Guernsey domiciled custodian or prime broker.

Each PIF Route 1 fund will require a POI Law licensed PIF Manager, albeit such manager is not subject to the Conduct of Business Rules nor the Capital Adequacy Rules which would usually apply to a POI Law Licensee.

FATCA CRS and economic substance

Guernsey collective investment schemes, whether registered or authorised, are:

- Foreign Financial Institutions (**FFIs**) for the purposes of FATCA
- Reporting Financial Institutions (**RFIs**) for the purposes of CRS.
- expressly stated to be out of scope of Guernsey's economic substance regime, save to the extent that they are deemed self-managed schemes

POI Law licensed managers are in-scope of Guernsey's economic substance regime by virtue of undertaking the relevant activity of fund management.

Regulatory Fees

The current regulatory fees are as set out as follows:

Licensee fees application fee

£2,755 per licensee (one-off payment)

Annual fee

Designated manager / custodian (open-ended funds)

£1,970 per licensee (annually)

Designated manager (closed ended funds)

£1,970 per licensee (annually)

Principal manager (open-ended or closed-ended funds)

£1,970 per licensee (annually)

Manager of closed-ended fund

£1,970 per licensee (annually)

Other licensees

£3,940 per licensee (annually)

Open-ended funds annual fee - scheme

£3,780 per scheme (annually)

Application fee - scheme

£3,780 per scheme

Annual fee per additional class

£265

Application fee - new class of umbrella / multi class scheme

£855 per scheme

Closed-ended funds application fee - fund

£3,780 per fund (one-off payment)

Annual fee - fund

£3,780 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 common practice for these to be amortised over a five year period.

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