

Guernsey Qualifying Investor Funds

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Preface

This memorandum has been prepared for the assistance of clients considering establishing a fund under the laws of Guernsey. It is intended to provide only a summary of the main legal requirements and general principles applicable to establishing a fund in Guernsey and it is not intended to be comprehensive in its scope. It is recommended that you seek specific legal advice on such matters and we would be pleased to assist you in this respect.

A series of briefings on other aspects of Guernsey law have been produced by Ogier and are available on request or on our website www.ogier.com.

This memorandum has been prepared on the basis of the law and practice as at 2 January 2014.

Streamlined Process Three Day Approval

Approval of Qualifying Investor Funds and the relevant consent or authorisation from the Guernsey Financial Services Commission (“the Commission”) will be forthcoming in three days. Only Qualified Investors (as defined below) are permitted to invest in a Qualifying Investor Fund.

Qualified Investors

Qualified Investor means: a Professional Investor, an Experienced Investor, or a Knowledgeable Employee as defined below.

Professional Investor

A Professional Investor is:

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Experienced Investor

An Experienced Investor is a person, partnership, or other unincorporated association or body corporate which has in any period of 12 months (whether on his own behalf or in the course of his employment by another person) so frequently entered into transactions of a particular type in connection with:

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being transactions of substantial size entered into with or through the agency of reputable persons who carry on investment business, that he can reasonably be expected to understand the nature of, and the risks involved in, transactions of that description; or who provides a certificate from an appropriately qualified investment advisor confirming that the investor has obtained independent advice.

Knowledgeable Employee

A Knowledgeable Employee is:

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Compliance with Qualified Investor Fund status

Funds, which are approved as Qualifying Investor Funds, must have in place measures to ensure that they are only available to investors who fall within the above definitions. The GFSC expects any warranties/certificates provided by potential investors to confirm what type of Qualified Investor they consider themselves to be, that is, whether they are a Professional Investor, an Experienced Investor or a Knowledgeable Employee.

Open-ended or Closed-ended

A Qualifying Investor Fund may be either an open-ended or closed-ended Collective investment scheme authorised under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended ('POI Law').

Open-ended and closed-ended funds may instead follow the Registered Fund regime which is dealt with in a separate briefing.

A Qualifying Investor Fund that is:

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Derogations from the B Rules or Q Rules

The GFSC will continue to accept applications for derogations from the Class B Rules or Class Q Rules. Requests for modifications should be made at least three working days in advance of the submission of the formal application for the approval of the fund.

Promoter/Investment Manager

The promoter and/or investment manager should be an institution regulated and of good standing, or, if conducting activities which do not require regulation, otherwise in good standing.

Good Standing

The GFSC's view is that good standing would imply that the institution, its directors, controllers and senior managers had not during the past five years been the subject of material disciplinary action by a regulator or professional body, or subject to any conviction for fraud, dishonesty or related offences of a financial nature.

Fit and Proper

The promoters and/or investment manager and their directors, controllers and senior managers must be fit and proper and this must be certified by the administrator. This is defined as being a requirement for integrity, competence and solvency.

Integrity

The promoters and/or investment manager (which term should be taken to include their controllers, directors and management) must be of a high reputation and standing. Poor reputation would be considered to be a negative factor.

The promoters and/or investment manager must carry on its business with prudence, professional skill and honesty.

In the case of a promoter and/or investment manager with a limited history, due to the fact that they are newly or recently established, the integrity of the controllers, directors and management should be assessed in the light of previous employment and experience. Such previous employment history should demonstrate that the individuals possess relevant experience in relation to managing or advising on investors' funds using similar investment strategies to those that will be adopted by the Qualifying Investor Fund. The administrator is expected to make direct contact with relevant individuals' previous employers as part of the necessary due diligence enquiries.

Solvency

The promoter and/or investment manager must be solvent. A promoter and/or investment manager regulated in another jurisdiction must also comply with the solvency, capital adequacy or financial resources requirement (as appropriate) laid down by the relevant regulatory body to which it is accountable.

Past performance should be considered to ensure that relevant requirements have been consistently met in the past.

In the case of a promoter and/or investment manager which are newly or recently established (and cannot produce audited annual financial statements for a period of at least 24 months), it will be necessary for the administrator to consider financial projections relating to the proposal under consideration. It will also be necessary to consider whether the controllers, directors and management of such promoter and/or investment manager have previously been responsible for considering the solvency of an entity (for example, if they held a director role or financial control function). Where individuals have been directors or held relevant positions at entities that have gone into liquidation or suffered financial loss, it will be necessary to consider the role undertaken by the relevant individual in such situations.

Competence

The most obvious way to demonstrate competence is to have established a favourable track record, in a business similar to that to be conducted in Guernsey.

A promoter must be able to demonstrate an acceptable complaints history. In the case of promoters which are newly or recently established, it will be necessary for the administrator to consider whether the controllers, directors and management of such entities have been subject to significant complaints whilst employed by other firms.

The promoter and/or investment manager should have staff of adequate skills, knowledge and experience to undertake and fulfil their duties efficiently and effectively.

Guernsey Administrator

All Guernsey incorporated funds must have a Guernsey resident administrator licenced under the POI Law. This requirement also applies to funds incorporated elsewhere and administered in Guernsey.

Approval Process

An application form must be submitted by the administrator containing:

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Three Day Approval

The GFSC will issue the necessary authorisation under the POI Law within three working days of receipt of the above.

Fast track application process for investment compartments of existing Qualifying Investment Funds

The GFSC has recently confirmed that they are in a position to fast track the authorisation of Investment Compartments (i.e. sub funds, cells and shares classes) of existing Qualifying Investment Funds by placing reliance on the warranties provided by the administrator. The GFSC will issue the relevant approval within three working days of receipt of the approved GFSC form and all documentation required by such form.

Licence applications for new managers

Although not a requirement, if the promoter requires the establishment of a Guernsey management company, that company must be licensed under the POI Law before the authorisation or consent can be issued in respect of the fund. The application process relating to the issue of a licence under the POI Law will normally take longer than the three working days.

However, the GFSC have published proposals to provide for formal consideration of any licence within 10 days of receipt of the relevant documentation. The proposals will require the Guernsey licensed administrator to perform similar due diligence in respect of the beneficial owners or controllers of the manager and to confirm that the application is complete and accurate.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide

legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

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