

Guernsey Green Funds: an environmentally friendly wrapper

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It remains to be seen whether this year's super-heated summer is a further indication of fundamental climate change or a statistical outlier, but what is incontrovertible is that governments around the world have committed to reducing carbon emissions and many of our best and brightest minds are developing green technologies which are improving the quality of our air, water and land, helping us to use natural resources more efficiently and generally mitigating the environmental damage caused by our current use of fossil fuels. These technologies are proving to be popular and, increasingly, profitable asset classes and there is also a growing interest among investors for truly green investment funds which do not sacrifice returns.

In the light of these factors, the Guernsey Financial Services Commission (the **GFSC**) introduced the Guernsey Green Fund designation to provide investment managers an opportunity to "assure investors that their investments are contributing to initiatives that have a positive environmental impact on the planet and in so doing inspire confidence that their investments are well regulated" [note - from GFSC consultation paper 28 April 2018]. The designation is available to registered and authorised schemes which are run in accordance with the Guernsey Green Funds Rules issued by the GFSC on 6 July 2018.

Criteria for applying the Guernsey Green Fund kite mark

The kite mark will be capable of being used in connection with Guernsey registered or authorised schemes whose assets are invested with the aim of spreading risk and with the ultimate objective of mitigating environmental damage resulting in a net positive outcome for the environment.

To this end, 75% of the scheme's investments must be in asset classes that fall within a set of Environmental, Social and Governance (**ESG**) principles compiled by the joint finance group of certain multilateral development banks including the African Development Bank, the Asian

Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank, the International Finance Corporation and the World Bank. The asset classes include net emission-reducing renewable energy technologies such as solar, wind and ocean power, technologies that improving the efficiency of transmission and distribution systems and the retrofitting of existing buildings to enable reductions in energy consumption.

The remainder of the scheme's assets can be invested more broadly, but must not lessen the Scheme's overall objective of mitigating environmental damage and must not be invest in certain proscribed asset classes, including uranium mining, fossil fuel-based power generation and 'anything that helps to extend the life of fossil fuel usage'.

In addition, the investment manager may include a statement in the scheme's prospectus that the manager intends to incorporate ESG principles into its investment analysis and decision making processes, further enhancing the socially responsible nature of the investment.

Who decides if the Scheme qualifies as a Guernsey Green Fund?

The Guernsey FSC will only designate a scheme as a Guernsey Green Fund if it is satisfied that the scheme's principle documents and its prospectus appear to conform to the new Rules and it has received a certification that the scheme meets the green criteria from either (i) an independent third party or (ii) a Guernsey licensee contracted to the scheme (usually the administrator or manager of the scheme). Once it is up and running, the designated administrator is required, on a monthly basis, to monitor the investments made by the scheme against the green criteria specified in the prospectus and its investment criteria. Where the scheme contravenes either it must take certain remedial steps to rectify the situation and where the contravention continues to be unrectified, the administrator will be required to make a notification to the Commission. In addition, the designated administrator is required to submit an annual return to the GFSC detailing how the scheme has invested within the green criteria within 6 months of the scheme's year end to confirm the scheme continues to qualify as a Guernsey Green Fund.

It is intended that investment managers and investors will see the Guernsey Green Fund designation as a valuable green assurance mark that will become a recognised standard for the investment industry, building as it does on Guernsey's strong reputation as a well regulated jurisdiction for financial products and one that is committed to a greener future.

Tim Clipstone is a partner in Ogier's Guernsey investment funds team. He has more than 20 years' experience as a lawyer in London, BVI and Cayman and has been consistently recognised as a leading practitioner by Chambers, Legal 500 and IFLR.

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