Ogier

Guernsey works for Hedge Funds

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Our Investment Funds team have put together the following FAQ as a useful guide to Guernsey hedge funds.

How are funds regulated in Guernsey?

All Guernsey funds are required to be registered or authorised pursuant to the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (the **PoI Law**) and all investment managers, advisors, administrators and custodians carrying on business in or from within Guernsey are subject to licensing under the PoI Law.

Does Guernsey's Investment Funds Regulatory Regime work for Hedge Funds?

Yes, the GFSC have issued notes regarding how they will treat applications for authorisations for hedge funds and confirmed these all also be applied to registered funds.

In fact, many hedge funds are already administered by Guernsey based administrators.

What structures are available as fund vehicles?

Funds may be established as:

- stand-alone companies limited by shares,
- protected cell companies,
- incorporated cell companies,
- limited partnerships (with or without legal personality), and
- unit trusts.

What types of regulation are hedge funds subject to in Guernsey?

There are two types of fund regulation in Guernsey:

Authorised Funds

Authorised funds are regulated directly by the Guernsey Financial Services Commission (**GFSC**). Hedge funds would most commonly be regulated under either the Class B Rules or the Class Q Rules issued by the GFSC. The GFSC have confirmed that derogations from the full scope of these rules are available to hedge funds with Qualifying Investors (broadly institutional or expert investors):

1. allowing the prime broker to be designated as the custodian.
2. disapplying the requirement that the custodian (or prime broker) be regulated in Guernsey, but instead being regulated in an acceptable jurisdiction, provided it has substantial net worth.
3. disapplying the requirement that such a custodian or prime broker have duties of oversight over the fund manager.
4. disapplying the requirement that a prime broker offer physical segregation of fund assets from its own assets, provided that the offering documents making clear and prominent disclosure of the risks inherent in such arrangements.
5. permitting arrangements which allow preliminary estimation of net asset value to be used on subscriptions and redemptions. On this basis, subscription monies could be taken into a fund before the final number of shares to be allocated had been determined, and interim redemption monies could be paid out of a fund, subject to a later final adjustment once NAV calculation has been completed, provided the risks of operating in such a manner are fully disclosed and the method for estimating NAVs was demonstrably robust.
6. allowing investors' money to be paid to the fund before the number of shares or interests has been determined, to allow deployment of investor funds upon receipt, with the issue of shares or interests being undertaken subsequently.

Registered Funds

Registered funds are regulated by the GFSC albeit under a lighter touch regime than for authorised funds. The GFSC relies on the due diligence performed by a Guernsey licensed administrator in order to satisfy itself of suitability of the fund (and its principals) for registration.

The most common regime for hedge funds to be registered under is the Registered Collective Investment Scheme Rules 2018 (the **RCIS Rules**) which incorporate the Prospectus Rules 2018 (a **Registered Open-ended Fund**).

The GFSC has confirmed that the derogations applicable to authorised funds for Qualifying Investors would also apply to Registered Open-ended Funds established for Qualifying Investors. In addition, there would usually be further derogations from the Prospectus Rules granted by the GFSC regarding disclosure of significant beneficial interests in the fund itself.

The RCIS Rules and the Prospectus Rules are designed to be lighter touch regulations than the rules applicable to Class B and Class Q funds and would suit funds aimed at institutional and expert investors.

In addition, Guernsey has a class of registered Private Investment Funds (**PIF**s) which do not require the publication of a prospectus or offering document and are subject to light touch rules; however, this structure is limited to 50 or fewer investors with no more than 30 new investors admitted each year (save for the first year) and the manager is required to declare that it has satisfied itself that the investors can bear the loss of investment made in the fund. As such, these structures, while providing regulatory flexibility, may not be suitable to larger managers or those who have a high volume of redemptions and subscriptions.

There is also an AIFMD compliant registered fund structure known as the Manager Led Product (**MLP**), which will become attractive to managers if the EU's marketing passport is extended to structures incorporated outside the EU, as Guernsey is approved for the marketing passport for such structures once it becomes available.

What level of nexus to Guernsey is the fund required to have?

The fund must be incorporated or formed in and under the laws of Guernsey.

The GP of a fund formed as an LP would ordinarily require a manager's licence to act as such.

The fund must have a Guernsey licensed administrator (in some rules described as the 'designated manager'). This does not mean that the administrator cannot outsource certain functions to suitable entities outside Guernsey, and this commonly occurs provided the outsourcing is undertaken in accordance with the GFSC guidelines.

Currently the PIF regime requires the manager of a PIF to be a Guernsey entity and licensed as a PIF manager, which is undertaken at the same time as the fund is registered. Such a manager is not subject to the full licensing regime and the Conduct of Business Rules do not apply to the PIF manager. It is anticipated that this will be removed as a requirement in the near future.

Unless subject to a derogation (as indicated above), open-ended authorised funds and Registered Open-ended Funds require a custodian which must be licensed in Guernsey and which must oversee the activities of the fund's administrator / manager. As mentioned above, the GFSC have recognised that for hedge funds that are restricted to Qualified Investors, these requirements will be waived and the GFSC will also recognise the prime broker as the custodian where suitable.

Corporate funds are not required to have any Guernsey resident directors, although there is a strong pool of suitably qualified and experienced NEDs in Guernsey.

Guernsey licensees are required to have at least 2 Guernsey resident directors.

Is the Guernsey Green Fund designation available to hedge funds?

Yes, if the fund meets the Green Criteria, it can be designated as a Guernsey Green Fund, providing benchmarked assurance to investors and third parties as to the green and sustainable credentials of the fund. The designation is also available for application by existing funds that meet the criteria.

How long does registration or authorisation of the fund take?

A Registered Open-ended Fund will be registered within three days of the application being submitted.

PIFs and MLPs are registered within one day of submission of the request for registration.

Authorised Class B and Q funds are processed within three days on a fast track basis, provided they are Qualifying Investor Funds (**QIF**s). Applications for authorisation of Non-QIF authorised funds takes between four to six weeks.

The Guernsey Green Fund designation is granted within five days of submission of the application.

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