

A quick guide to Guernsey's new Private Investment Fund Rules

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The Guernsey Financial Services Commission (the **Commission**) has added two new ways to register a Private Investment Fund (**PIF**) in Guernsey. A public consultation process showed that there was strong support for a PIF model without the attached Protection of Investors Law, 1987 (**POI Law**) manager, allowing the industry more flexibility while maintaining protection for investors.

Accordingly, on 20 April 2021 the Commission published The Private Investment Fund Rules and Guidance 2021 (the **Revised Rules**). The Revised Rules take effect immediately and replace The Private Investment Fund Rules, 2016.

Unlike the traditional way of registering a PIF (now known as Route One registration), the two additional routes do not require the PIF to have a manager licenced under the POI Law.

All PIFs registered currently with the Commission will continue to be registered under the traditional regime as they will meet the requirements under Route One. If an existing PIF wishes to change the basis of its registration using either the new Route Two or Route Three paths to registration, the Commission have advised that this will be treated as a new PIF application with a corresponding application fee being payable.

The requirements to qualify as a PIF under each of the three routes to registration are described below:

Route One – POI Licensed Manager PIF

- the number of investors must be no more than 50 legal or natural persons holding an ultimate economic interest in the PIF, except where the investment is made by an investment manager acting as agent for a wider group of stakeholders (this may be, for example, a manager acting as agent for investors in a collective investment scheme or equivalent, pension holders in an occupational scheme, or government funds – whether local or

sovereign). The Revised Rules state that a holder (in relation to a share in a PIF) means the person who is entered in the register as the holder of the share or unit or limited partnership interest or the first named holder in the case of joint holders.

Ogier would be happy to advise further on how this 50 person threshold may be met or exceeded depending on the type of investor concerned;

- the scheme must be limited to no more than 30 new ultimate investors being added in the preceding twelve months;
- the scheme must be either an open-ended or closed-ended collective investment scheme; and
- there must be a licensee responsible for its management.

Route Two – Qualifying Private Investor PIF

To register a PIF through Route Two, all investors will have to meet qualifying investor criteria which are designed to protect more vulnerable investors:

- all investors must meet qualifying criteria consistent with the definition of qualifying investor under the Qualifying Investor Fund (**QIF**) regime (it should be noted that there is an enhancement to the criterion for an individual investor who makes an initial investment of not less than US\$100,000 or equivalent, requiring that the amount invested represents no more than 25% of the individual's investable assets);
- all investors must fit within the definition of a Qualifying Private Investor (**QPI**) (for the purposes of this route, a QPI is an investor who is able (a) to evaluate the risks and strategy for investing in a PIF and (b) to bear the consequences of investment in the PIF, including the possibility of any loss arising from the investment);
- any marketing must be specifically targeted to individual investors who have been identified as QPIs;
- the number of offers of units for subscription, sale or exchange must not exceed 200; and
- written disclosure must be made to prospective investors providing at a minimum information on the regulatory status of the scheme, investor suitability and risk warning;
- the fund must have a designated administrator appointed to it but there is no requirement to appoint a manager;
- the designated administrator must make a declaration to the Commission, in the format required, that effective procedures are in place to ensure restriction of the scheme to QPIs; and
- all investors have received a disclosure statement in the format prescribed by the

Commission.

Route Three – Family Relationship PIF

The third route will enable a PIF to be created as a bespoke private wealth structure requiring a family relationship between investors. Accordingly, the following restrictions apply to Route Three:

- a family relationship must apply between all investors or be an eligible employee of the family (for the purposes of this route, an "eligible employee" means an employee of the family meeting the definition of a QPI under Route Two);
- the PIF cannot be marketed outside the family group;
- the designated administrator must make a declaration to the Commission, in the format required, that effective procedures are in place to ensure that all investors fulfil the requirement of being related;
- no capital may be raised by the fund from investors outside the family relationship; and
- the fund must have a designated administrator appointed to it but there is no requirement to appoint a manager.

Which route a fund takes will depend on its needs and desired outcome. Ogier has a wealth of experience in advising on the establishment of PIFs and would be happy to discuss these new requirements with you further.

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