

Guernsey Funds

Guernsey Financial Services Commission (GFSC) statistics at 31 March, 2009 disclose that there are 1196 investment funds managed from Guernsey with a total value of over £175.9 billion. Of these, 289 funds are open ended, 609 closed ended and 298 are non-Guernsey domicile funds. The number of open ended funds only represents the parent umbrella or protected cell entity.

Why Guernsey

The rapid growth in the number and value of Guernsey based funds and the continued evolution of the Island's legislative framework has increased the attractiveness of Guernsey as the jurisdiction of choice for an increasing number of fund promoters when establishing offshore fund structures

- **High standards of business conduct and infrastructure**

The Island boasts an established infrastructure of service providers with specialist expertise and a pro-active regulator in the GFSC. The regulatory infrastructure has been subject to audit from bodies such as the Financial Action Task Force and the International Monetary Fund which reported that

"the GFSC meets with the industry regularly to ensure that Guernsey's regulatory regime continues to be pragmatic, as well as meeting international standards".

In addition the GFSC is a well-established and well respected supervisory agency with an experienced staff and has a good range of regulatory and enforcement powers. Whilst the GFSC continues

to be proactive in enhancing the Bailiwick's regulatory regime, which can be evidenced by the recent regulatory changes to fund legislation, it also remains focused on meeting its international obligations and standards.

Guernsey has also developed a legal and institutional framework for Anti-Money Laundering, particularly with respect to the confiscation of the proceeds of criminal conduct, exchange of information and international cooperation.

- **Convenient time zone**

Located in the same time zone as London, Guernsey is convenient for European promoters and/or their investors.

- **Familiarity of service provider**

A promoter may already have a valued relationship with a Guernsey based administrator.

Fund Evolution

New rules were introduced in the last quarter of 2008 under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended ("POI Law"). Under the new rules Closed-ended investment schemes are now included in the definition of "collective investment schemes" under the POI Law and any application for regulation of either an open or closed-ended scheme may now be made under the "Authorised" regime or the lighter touch "Registered" regime.

Guernsey Funds (CONTINUED)

Authorised Funds

Authorised open-ended schemes continue to be governed by either the Class A, Class B or Class Q Rules, but the Class A Rules have been updated with a 2008 version (in force 24 November 2008) which reflect a movement to liberalise UCITs in Europe.

Closed-ended schemes may now be approved under the Authorised regime with the introduction of the Authorised Closed-Ended Investment Schemes Rules 2008 (the "Closed- Ended Rules"). These rules provide for the administration of a closed-ended scheme and certain ongoing compliance matters and the obligations to notify the Commission or investors in the fund.

Existing closed-ended schemes were automatically classified as Authorised funds on 15 December 2008 and were given until April 2009 to decide if they wished to be treated as a registered closed-ended scheme. Thereafter such funds were deemed to have been granted a registration in accordance with the new Registered Rules (as defined below) if they advised the GFSC accordingly.

Any existing closed-ended schemes which do not elect for registration under the Registered Rules would need to revise their principal documents (articles of incorporation, limited partnership agreement or unit trust instrument and related management agreements) to comply with the Closed-Ended Rules either at the next occasion when an amendment of their principal

documents is put to investors or by not later than April 2011, although it is anticipated that most existing closed-ended funds will already substantially comply with the Rules.

Registered Funds

Open-ended funds can now take advantage of the fast-track application process of the Registered fund regime, which previously only dealt with closed-ended schemes. Open and closed-ended schemes are now both included in the Registered Collective Investment Scheme Rules 2008 (the "Registered Rules"). The Registered Rules provide for the administration and custody of a Registered scheme, certain ongoing compliance matters, the obligations to notify the Commission and investors in the scheme and the preparation of a prospectus, though they do not deal with the content of the prospectus.

The Prospectus Rules 2008 (the "Prospectus Rules") have been introduced to regulate the contents of prospectuses issued by a Registered open or closed-ended scheme including information to be disclosed and the type of statements that must be included.

Existing Authorised open-ended schemes were given until April 2009 to decide if they wished to be treated as a Registered open-ended scheme and were granted a registration in accordance with the Registered Rules only if they advised the GFSC otherwise by April 2009.

Guernsey Funds (CONTINUED)

Hedge Fund

The GFSC allow a Guernsey Hedge Fund to appoint a suitably qualified prime broker in place of a Guernsey domiciled and licensed custodian. In addition the GFSC do not, for institutional and expert investor funds, insist on complex segregation requirements for prime brokers holding fund assets. Additionally, the GFSC also recognises the complexities of determining net asset value for some hedge funds and funds of hedge funds, and grant waivers for funds that can demonstrate a need to use net asset value estimation processes in advance of final net asset value determination.

Control of Borrowing

All but limited sections of the Control of Borrowing (Bailiwick of Guernsey) Ordinances, 1959 to 2003 ("COBO") have now been repealed although the following section of the Ordinance still apply

- Consent under COBO for borrowing and guarantees - still required
- Consent under COBO for establishment of closed ended funds (and further issues) - transferred to POI Law and the new rules

Prospectuses

The Prospectus Rules regulate the contents of Registered fund prospectuses and also apply to offers of any controlled investment ("General Securities and Derivatives") either made by a Guernsey entity (company, limited partnership or unit trust) or made to the public in the Bailiwick wherever the offeror is domiciled. The "public" is defined as an identifiable category of persons exceeding 50 in number. The Prospectus Rules do not apply to offers of investments which are listed on an exchange supervised by a

member of the International Organization of Securities Commissions (IOSCO), such as the London Stock Exchange or AIM.

Any prospectus circulated in the Bailiwick of Guernsey or outside the Bailiwick by a Guernsey entity must meet the requirements of the Prospectus Rules and be delivered to the Commission for registration on payment of an application fee. Any changes to the contents of the prospectus must be notified to investors.

POI Licensees

In October 2008 the Commission introduced a fast track process for consideration of a POI Law licence application for any company domiciled in Guernsey which acts as fund manager to a Registered fund or QIF. Where the fund structure includes a Guernsey fund manager or the fund is structured as a limited partnership and has a Guernsey general partner, the Commission will process the application for the licence of such entity (with reliance on the certification of the administrator) under the fast track licensee application process and put it before the Commission's Licensing Committee within ten business days of receipt.

The Commission has confirmed that administrators and other service providers which are licensed to provide restricted activities to only category 2 controlled investments ("General Securities and Derivatives") which category previously included closed-ended funds, will, with the re-classification of closed-ended funds as "collective investment schemes", automatically be deemed to hold a licence for providing the same services to category 1 controlled investments ("Collective Investment Schemes").

Guernsey Funds (CONTINUED)

Cayman & BVI Funds

A restricted activity i.e. administration, custody or management for a non-Guernsey domicile fund can be undertaken in Guernsey. This practice is commonplace and recent statistics show that such activities take place for 298 such funds with an aggregate value of over £25 billion.

Channel Islands Stock Exchange (CISX)

Many investors are only able to consider investment into a fund if it is listed on an exchange. Furthermore the exchange may need to be recognised by a specific regulatory or fiscal authority. The CISX is an answer in the search for a suitable listing and it compliments the other attractions of the Guernsey fund framework.

The Exchange is recognised by the UK Inland Revenue, the UK Financial Services Authority, the US Securities and Exchange Commission, and the Australian Stock Exchange. The CISX is also an affiliate member of the International Organisation of Securities Commission (IOSCO) and a member of the European Securitisation Forum. For more information see our fact sheet on the Channels Islands Stock Exchange.

Contact Us

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