

A large, abstract graphic of a network or sphere made of interconnected blue nodes and lines, positioned in the upper right background. The nodes are 3D cubes, and the lines are thin, connecting them in a complex, spherical pattern.

Guernsey

Regulation

FUNDS AND FUND MANAGEMENT 2009

2.1 Types of funds

Open-ended and closed-ended mutual funds may be organized in Guernsey as unit trusts, investment companies (including protected and incorporated cell companies), or limited partnerships.

In October 2008, those parts of the Control of Borrowing (Bailiwick of Guernsey) Ordinances 1959 as amended (COBO) which were relevant to funds business were repealed and the POI law amended to the effect that both open ended and closed ended funds are now regulated by The Protection of Investors (Bailiwick of Guernsey) Law 1987 (as amended) (the POI law).

The POI law divides Guernsey funds into two categories, namely authorized investment schemes and registered investment schemes. Both open-ended and closed-ended funds may be either authorized or registered schemes under the POI law.

2.2 Laws

The major rules and regulations applying to fund business in Guernsey are the following:

- The Protection of Investors (Bailiwick of Guernsey) Law 1987 (as amended)
- The Companies (Guernsey) Law 2008
- The Control of Borrowing (Bailiwick of Guernsey) Ordinances 1959 as amended ('COBO')
- The Limited Partnerships (Guernsey) Law 1995
- The Protected Cell Companies Ordinance 1997
- The Incorporated Cell Companies Ordinance, 2006
- The Registered Collective Investment Scheme rules 2008
- The Authorized Closed Ended Investment Scheme Rules 2008

- Prospectus Rules 2008
- Authorized Collective Investment Schemes (Class A) Rules 2008
- Class B Fund Rules 1990
- Class Q Fund Rules 1998

Under the collective investment scheme rules there are three types of authorized open-ended funds in operation.

Class A

UCITS equivalent schemes which follow closely the rules, which apply to UK-authorized collective investment schemes. The previous rules have now been updated and were issued and became effective on 24 November 2008. The rules were updated to bring them into line with more liberal developments with regard to UCITs in Europe. The revised rules are based on the United Kingdom's New Investment Scheme Sourcebook. The GFSC has re-submitted their revised rules to the FSA for confirmation that the rules provide equivalent protections to those accorded to under the UK rules, after which they will submit the rules to HM Treasury for a new statutory instrument designating the rules so that the funds operating in accordance with them may be freely marketable in the United Kingdom. The GFSC have issued the new Class A rules in advance of the designation by HM Treasury to allow the establishment of new Class A schemes or the conversion of existing Class A schemes making use of the more liberal investment powers but which do not intend at present to market in the United Kingdom. The history regarding previous designation by HM Treasury for the previous Class A rules (such as Class A Rules 2002) is detailed in the immediate two paragraphs below.

In December 1988 the Bailiwick of Guernsey was granted Designated Territory status under section 87 of the UK Financial Services Act (FSA). Section 87 FSA 1986 has now been superseded by Section 270 of the Financial Services Markets Act (FSMA) 2000. Article 67 of Statutory Instrument 2001/2636 specifies that designation orders previously made under Section 87 FSA 1986 also apply to Section 270 FSM 2000.

The granting of this status recognizes that the rules in Guernsey governing Class A Schemes provide investors with protection at least equivalent to that provided under the FSMA. In addition to the UK, Guernsey Class A funds may be marketed to the public (under application to the relevant authority) in Australia, Belgium, Hong Kong, Japan, the Netherlands, the Republic of Ireland, and Switzerland. In each of the seven jurisdictions recognition of equivalence in regulation has been sought and agreed between the Guernsey Financial Services Commission (GFSC) and the relevant overseas authorities. In addition funds can be marketed to South Africa and Sweden as long as certain conditions are met.

Class B

Funds ranging from the retail product aimed at the general public via institutional schemes, to the strictly private fund.

The Class B scheme rules incorporate a measure of flexibility including wider investment and borrowing powers than those permitted under UCITS equivalent schemes, while maintaining meaningful investor protection. They are applied by the GFSC exercising judgment and discretion and taking into account all the facts pertaining to a particular application.

Class Q

Funds targeted at qualifying professional investors which can include a government or municipal authority, a trustee of a trust with net assets in excess of GBP 2 million (or currency equivalent), a body corporate or limited partnership if it, or a holding company, or a subsidiary that has net assets of GBP 2 million (or currency equivalent), or an individual who has together with a spouse, a minimum net worth - excluding main residence and household goods - of GBP 500,000 (or currency equivalent).

The Class Q rules seek to provide a clear and concise set of requirements for the operation of professional investor funds and have been designed to encourage innovation. Accordingly the rules place emphasis on disclosure of risks inherent in the investment vehicle, rather than on prescription. Other key features of Class Q funds include simplified document requirements, timely processing of applications, and no prescribed minimum subscription requirement.

General

Where any management, administration or custody is to be carried out in Guernsey in respect of any collective investment scheme, which is not established or authorized under Guernsey law the licensee, must give notice of the proposed activity and furnish appropriate information to the GFSC.

The protected cell company's legislation provides for the formation of authorized collective investment schemes as protected cell companies for the purpose of segregation and protecting assets in separate cells from the liabilities of other cells (unless the company has entered into an explicit recourse agreement). This type of company is an appropriate structure for an umbrella fund.

Incorporated cell company (ICC) is a newer Guernsey structure which is similar in structure to a PCC but each individual cell is incorporated and recognized as a separate legal person. There are no legal restrictions on the kinds of companies that can be incorporated as ICCs. An incorporated cell is a company in its own right and are not subsidiaries of the ICC.

It is also been possible for closed-ended funds to be established as, or converted into protected and incorporated cell companies.

Authorized versus registered

The stated policy of the GFSC is that authorized investment schemes are subject to closer supervision than registered schemes. One of the more significant advantages that registered schemes have over authorized funds is that the fast track three day approval process for the fund and the fast track 10 day approval process for service providers. Authorized funds remain subject to the lengthier traditional approval process.

2.3 Managers, trustees, and custodians

Managers, trustees, and custodians must obtain a license under the Protection of Investors (Bailiwick of Guernsey) Law 1987 (hereafter the POI Law).

The POI Law requires every authorized collective investment scheme to have a designated manager and a designated trustee (in the case of an open-ended unit trust) or a designated custodian (in the case of an open-ended investment company) and such licensees are subject to these rules. Designated managers are the established fund management companies who specialize in third party fund administration/management.

In the case of a registered open-ended scheme, a designated manager and a designated trustee or designated custodian licensed under the POI law and domiciled in Guernsey must be appointed.

In the case of a registered closed-ended investment scheme, a designated manager licensed under the POI law and domiciled in Guernsey must be appointed. The GFSC is willing to consider the appointment of a custodian/trustee that is domiciled outside of Guernsey for a registered closed-ended collective scheme. For the avoidance of doubt, a registered closed-ended scheme is not required to appoint a custodian.

Designated trustees/custodians must maintain gross capital of GBP 4 million and designated managers' gross capital of GBP 100,000 or 25 percent of their annual audited expenditure, whichever is the greater.

Managers of Class A schemes are required to participate in the compensation scheme. This is a scheme to provide compensation for investors in Class A schemes of up to GBP 5 million in any year, subject to individual limits per investor. The GFSC will require an irrevocable letter of credit in connection with its contingent liability under the compensation scheme or a legally binding undertaking to comply at all times with the financial resources requirements applicable to designated managers.

Furthermore, managers of funds set up under the Control of Borrowing (Bailiwick of Guernsey) Ordinance 1959, and who are not already managers of open-ended schemes, are required to be licensed under the POI law which requires gross capital of GBP 25,000.

There is no requirement for fund managers or trustees to be owned by financial institutions, although in practice the majority of them are.

There are no limits imposed on the fees of managers or of trustees.

2.4 Investment restrictions

Restrictions on Class A funds

Guernsey law places restrictions on the investments which Class A funds may make. Part 5 of the Authorized Collective Investment Schemes (Class A) Rules 2008 (the Class A rules 2008) sets out the investment and borrowing powers that an authorized scheme has. Part 5 sets out both the powers that apply to all categories of authorized schemes generally as well as the powers specifically relating to the different categories of authorized schemes. Below is set out a general overview of the restrictions imposed on investments that may be made by Class A funds but should be read in conjunction with other limits in section 5.2.11 of the Class A rules 2008 and other detailed general guidance on these permissible investments within the rules.

Authorized scheme investments and investment techniques	Limits	
	Permissible investment	Maximum limit
Investment		
Approved securities	Yes	None
Transferable securities that are not approved securities	Yes	10%
Government and public securities	Yes	None
Section 270 Designated Funds and UCITS III compliant Funds	Yes	None
Non-UCITS III Open-Ended Collective Investment Schemes	No	N/A
Warrants	Yes	None
Closed-Ended Investment Vehicles	Yes	None
Deposits	Yes	None
Derivatives	Yes	None
Immovables (i.e. real property)	No	N/A
Gold	No	N/A
Hedging	Yes	None
Stock lending	Yes	None
Underwriting	Yes	10% (T)
Borrowing	Yes	None
Cash and near cash	Yes	None

Note:

Meaning of terms used: A percentage an upper limit (though there may be limits of other kinds such as those set out in rule 5.2.11)

(T) Temporary only - see rule 5.5.4(iv) (General power to borrow)

N/A Not applicable

Government and other public securities issued by the same issuer

If 35 percent or less of the authorized fund is invested in government and other public securities issued by any one issuer, there is no limit on the amount that may be invested in such securities.

An authorized scheme may invest more than 35 percent in value of the scheme property in such securities issued by any one body provided that:

- the manager has before any such investment is made consulted the trustee and as a result considers that the issuer of such securities is one which is appropriate in accordance with the investment objectives of the scheme;
- no more than 30 percent in value of the scheme property consists of such securities of any one issue; and
- the scheme property includes such securities issued by that or another issuer of at least six different issues.

2.5 Borrowing

Restrictions apply to Class A funds only. Currency may be borrowed provided an amount of base currency at least equal to the amount of currency borrowed is placed on deposit.

Amounts may be borrowed if the aggregate of such borrowings amount to less than the total of all sums which are to become part of the fund within one month and if the total of such borrowings do not exceed 10 of the fund.

2.6 Accounts and prospectus

A fund is obliged to publish its accounts. A fund may choose any accounting period end. The rules governing funds indicate that regulated funds must produce audited annual accounts. The fund's principal documents will indicate when the first accounting period will end. Once the period end has been established, permission from the administrator of income tax and the GFSC must be sought if a change of accounting date is necessary.

A fund must publish a prospectus that must be approved in advance by the GFSC.

2.7 Supervision

The regulatory authority for Guernsey funds is the Guernsey Financial Services Commission, La Plaiderie Chambers, La Plaiderie, St. Peter Port, Guernsey GY1 1WG.

The GFSC published a document on its website on 17 December 2004 referred to on the Web site as: Guidance document on corporate governance which the Commission has issued to all regulated institutions.

The document is titled: Guidance on corporate governance in the finance sector in Guernsey.

It outlines what the GFSC considers to be the basic requirements for corporate governance for the finance sector in Guernsey. While this guidance is not prescriptive, it notes that failure to meet the basic standards laid down by this document will be taken into consideration by the GFSC in determining whether licensees or individuals are fit and proper. It applies to all regulated financial services businesses in Guernsey.

The guidance sets out its relationship to existing laws that apply to various sectors regulated by the GFSC.

It can be seen as a broad overview of general corporate governance principles that represent the minimum standards of corporate governance required of funds and other sectors regulated by the GFSC.

As referred to section 2.2, the GFSC announced a new framework whereby the commission will grant the required fund consent under the POI Law within three working days, provided that an appropriate licensed Guernsey service provider has certified to the commission that:

- they have performed sufficient due diligence to be satisfied that the promoter and associated parties are fit and proper;
- effective procedures are in place to ensure that the fund is not offered directly by the issuer to the public (i.e. any person not regulated under any of Guernsey's financial services regulatory laws) within the Bailiwick of Guernsey; and
- the status of the registered closed-ended investment fund is specifically referred to in the prospectus, offering document or equivalent such that neither the commission nor the states of Guernsey Policy Council have reviewed the prospectus, offering document or equivalent and that neither the commission nor the states of Guernsey Policy Council takes any

responsibility for the financial soundness of the fund or for the correctness of any of the statements made or opinions expressed with regard to it.

For both open and closed-ended funds aimed at professional, experienced and knowledgeable investors, the GFSC has undertaken to grant fund approval within three working days provided that an appropriately licensed Guernsey applicant has certified to the GFSC that:

- the fund will be restricted to professional, experienced and knowledgeable investors;
- the applicant has conducted due diligence on the promoter and associated parties and has found them to be fit and proper; and
- the applicant is satisfied as to the fund's economic rationale and the disclosure of any risks associated with the investment vehicle.

2.8 Fund ownership

There are no restrictions on the percentage of the units in a fund, which may be held by one person or, group of persons.

2.9 Fund structure

A fund of funds is permitted in Guernsey. Umbrella funds also are permitted in Guernsey.

It is possible to establish a hedge fund in Guernsey as either a Class B or Q collective investment scheme or as a closed ended fund. No special regulatory provisions apply.

2.10 Stock exchange

A stock exchange was opened in Guernsey in October 1998 covering the Channel Islands. One of the objectives of this stock exchange is to provide listings for local funds. Guernsey funds are also quoted on stock exchanges in London, Amsterdam, Dublin, Luxembourg, Budapest, and the Cayman Islands.

2.11 Bank secrecy

With effect from 1 January 2000 Guernsey extended its money laundering laws to cover crimes generally. The same principles concerning banking secrecy apply as in the United Kingdom.

2.12 Fund set-up

The cost of creating a straightforward fund in Guernsey would vary between GBP 10,000 and GBP 15,000 and would take between two and three months. (However see paragraph 2.7 above.)

2.13 Foreign funds

The marketing of foreign funds is dependent upon the manager holding a license under the POI Law. Only foreign funds from designated territories can currently be marketed in Guernsey without a separate Guernsey license. At present designated territory status has been granted by Guernsey to the United Kingdom, Jersey, the Isle of Man, and the Republic of Ireland.

There are no exchange controls in Guernsey.

2.14 Bearer shares

Guernsey companies are not able to issue shares in bearer form. Technically it may be possible for a unit trust to have bearer units. However it is the policy of the GFSC not to allow their use.

2.15 Use of the internet

Existing legislation is being monitored and reviewed by the GFSC in order to ensure that the growth of the Internet as a marketing tool for the sale of investment funds is sufficiently regulated. Several local fund managers have web sites from which information concerning their investment schemes can be obtained.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.