

# Briefing

## Closed-Ended Funds in Guernsey - The New Regime

### Change of regime

The Guernsey Financial Services Commission has introduced a regime whereby closed-ended funds will no longer be required to complete the present consent process which can take some weeks. Consent may now be obtained from the Commission within 3 days of filing the required documents with the Commission. Closed-ended funds which have received consent in this way will be called "registered" funds.

### Filing requirements

The following must be filed with the Commission:

- certified final copy of the prospectus, offer document or equivalent, including the application form, subscription agreement or equivalent;
- certified copies of the constitutive documents (memorandum and articles, limited partnership agreement or unit trust deed);
- certified final copies of all material agreements such as management agreement, investment management agreement, administration agreement, custodian agreement, etc.;
- the required fee;
- a certificate from the administrator of the fund confirming that the administrator has performed sufficient due diligence to be satisfied that the promoter of the fund and the associated parties to the fund are fit and proper;
- a certificate from the administrator of the fund confirming that the fund will not be offered directly to the public in Guernsey;

- a certificate from the administrator of the fund confirming that the prospectus contains the relevant disclaimers required by the Commission;
- forms GFA and APC (which forms will, as usual, be prepared by Ogier);
- forms PQ completed by any directors of a corporate fund; and
- forms PQ for any controllers, directors and senior managers of the promoter.

### Promotion of the fund

The guidelines require that the administrator certify that the fund will not be offered directly to the public in Guernsey. In this regard, the Commission have previously provided detailed guidance on what it considers is permissible promotion in Guernsey. Broadly speaking, the Commission differentiates between active and passive promotion. Passive promotion is permitted; active promotion is not.

In that respect, by way of example in relation to a registered fund:

- the fund can be listed;
- there is no minimum subscription limit;
- promotion of the fund may be made to any entity or person which is licensed under the Banking Law, Protection of Investors Law, Insurance Laws or Fiduciaries Law in Guernsey;
- direct advertising in the Guernsey Press is not permitted; and



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- responses to any requests by any individual or entity in Guernsey for information may be given.

### Certification of the Administrator

The Commission place great reliance on the certification by the administrator of the fund. Should an administrator not provide certification to the Commission's satisfaction, it is likely that the administrator will not be permitted to participate in the regime for registered funds.

A Guernsey registered fund must have a Guernsey administrator.

The Commission have set out in guidelines the due diligence that the administrator is required to perform. This is similar to that required in respect of qualifying investor funds. The main criteria is that the promoter is fit and proper which means that the administrator is satisfied with the integrity, solvency and competence of the promoter.

### Required disclaimer

The following must appear in the prospectus:

"Consent under the Control of Borrowing (Bailiwick of Guernsey) **Ordinance, 1959-1989** as amended has been obtained to this issue. To receive such consent application was made under the Guernsey Financial Services Commission's framework relating to Registered Closed-ended Investment Funds. Under this framework neither the Guernsey Financial Services Commission nor the States of Guernsey Policy Council have reviewed the prospectus but instead have relied on specific warranties provided by the Guernsey licensed administrator of the Fund. Neither the Guernsey Financial Services 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."

### Uses

It is likely that the new regime will be available for many closed-ended funds. However, it will not be appropriate for funds where the Commission's usual consent process is required by another regulator. For example, where a fund lists on Euronext, the Dutch regulator expects that the Commission's full processes will have been completed.

Unlike qualified investor funds, however, this regime will enable listed funds to receive consent as Guernsey registered funds.

Where a new manager or general partner is incorporated in Guernsey, that new entity will continue to require a licence under the Protection of Investors Law. This is likely to be the most important development as, in particular, permanent capital vehicles will be able to take advantage of this new process when listed on exchanges such as London.

### About Ogier

Ogier is one of the world's leading providers of offshore legal and fiduciary services employing over 600 professional and support staff. The group has a presence in nine jurisdictions around the world, namely the British Virgin Islands, the Cayman Islands, Guernsey, Hong Kong, Ireland, Jersey, London, Montevideo and New Zealand.

Ogier provides advice on all aspects of BVI, Cayman, Guernsey and Jersey law and associated fiduciary services through a global network of offices that cover all time zones and key financial markets including the rapidly growing Asian and Chinese markets

Ogier continues to be recognised as a leading law firm by the leading legal directories, including Legal 500 and Chambers.

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