

Guernsey funds: stability and support in challenging times

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This article was written to coincide with the Guernsey Funds Forum Webinar, organised by We Are Guernsey on 14 May as a precursor to the annual Funds Forum event which has been rearranged to take place in London on 2 November 2020.

If you are reading this, I hope you are well. A great deal has happened since the Funds Forum was announced and then delayed in the wake of the ongoing Covid-19 pandemic. While the pandemic will undoubtedly be a catalyst for change for many, it is also a chance to take stock to consider how Guernsey is positioned to build on its funds offering, offer stability and support to those clients working through unprecedented challenges, and to build upon those key themes which had been planned for discussion in May.

At the most basic level, the regulatory optionality afforded to managers and investors under Guernsey's funds and related regimes means that Guernsey is extraordinarily well-placed to efficiently support a multitude of individual strategies and structures, including those new managers looking to launch their first vehicle. Whilst the investment backdrop may be complex and ever-changing, the fund regime in Guernsey remains clear, with a proportionate level of regulation reflective of the chosen structure. Not wishing to underplay the role of a good funds lawyer but the Guernsey funds regime is pretty straight-forward – from the lightly regulated Private Investment Fund (PIF), which requires compliance with only a handful of key requirements, through to other fund classifications requiring more regulation corresponding to their type. In addition, Guernsey's flexible company and partnership laws offer further benefits to investors and managers.

Whilst regulated funds (which includes all of Guernsey's funds) remain out of scope of the substance requirements which have been adopted by Guernsey and multiple other jurisdictions over the past few years in response to the EU's "blacklisting" of non-cooperative jurisdictions for tax purposes, fund managers are firmly in scope and Guernsey has demonstrated adaptability in dealing with these requirements. What has been clear to me, and not in any way down-playing

the substance of these rules, is that the rules are not onerous or difficult to comply with if you are already doing things right – which covers the overwhelming majority of in-scope entities in Guernsey. I've written many times before about the importance that well-regulated tax neutral jurisdictions like Guernsey play globally – something which is frequently overlooked in many narratives over tax neutrality. Importantly, creating a streamlined regime for overseas funds to continue to be made available to the UK market remains firmly on HM Treasury's agenda – indeed, they are consulting on the issue now – and Guernsey expects to be well-placed to further enhance its interconnectedness with the UK in this respect.

Guernsey's regulatory optionality, or for want of another term – flexibility – means that it's not just funds which benefit from Guernsey's simple regulatory approach. Sometimes the regulatory clarity which is needed is to confirm that a vehicle will not be regulated as a fund – the certainty of falling outside a regime is sometimes just as important as the certainty of falling in it. As such, fund-of-one and fund-like structures are well-supported in Guernsey, and there is ample precedent for their use.

One key message which cannot be missed from this piece is on sustainability and climate change. Several commentators have already mentioned that the ongoing Climate Emergency is yet another victim of the pandemic. The focus is understandably on minimising the terrible impact of the pandemic at present but regrettably that doesn't mean that the Climate Emergency is taking a break. Guernsey continues to push forward in this area with its Green Fund regime and The International Stock Exchange's market segment for green investments, TISE Green. It is clear to me that sustainability will (and must) increasingly permeate everything we do – not just through the proposition of green investment strategies made to investors but through the whole chain of advisers engaging in establishing funds and facilitating investments. We will all have our part to play.

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