# Simplicity, flexibility and speed to market – The Guernsey Private Investment Fund

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*Responding to market demand and an evolving investment funds market*

The introduction of the Private Investment Fund (the **PIF**) again showed why Guernsey is one of the world's leading fund domiciles and its continued ability to meet the needs of fund promoters and investors.

The Guernsey Financial Services Commission (the **Commission**), following industry consultation, delivered a simple, flexible, appropriately regulated, fund categorisation which recognises that in some cases there is a closer relationship between the fund manager and investors.

The PIF provides a flexible fund structuring option that falls between those funds having more than 50 investors and unregulated investment structures that do not constitute collective investment schemes for Guernsey law purposes.

Although only introduced in late 2016 the PIF is proving to be an increasingly popular option for the full spectrum of fund promoters.

## PIF structure flexibility – no exclusions

PIFs are flexible and may be closed-ended or open-ended. They may be corporates (including cellular companies), limited partnerships, unit trusts or any other vehicle approved by the Commission.

## Timing – speed to market

With a Commission response time of one day for registration the PIF offers promoters speed to market with a regulated fund product and the flexibility to follow their own timelines. Promoters can place greater focus on the commercial aspects of their fund.

This response time applies to both the registration of the PIF itself and the licensing of the PIF's related Guernsey manager.

## The PIF Manager requirement – manager, general partner, trustee

A PIF requires a Guernsey domiciled and licensed manager (**PIF Manager**) to take responsibility for its management. This may, for example, be the general partner of a limited partnership, an investment manager of a company or the trustee of a unit trust.

Such PIF Manager requires a licence under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (the **POI Law**), although unlike non-PIF persons licensed under that law the PIF Manager will not be subject to the conduct of business or capital adequacy rules that ordinarily apply

The Commission, whilst not imposing rules on it, sees the PIF Manager as having a role of substance in discharging corporate governance. The stated philosophy being that the PIF Manager exists for the promoter of the PIF, who will have a relationship with the investors.

## The Manager/Investor relationship

The PIF categorisation is intended for those arrangements where there is a close relationship between the manager and the investor. As a result, to receive the benefits of the PIF categorisation, the PIF Manager is required to declare upon application for a PIF registration that it has made an assessment of the investors known to be intending to invest, and as far as it has reasonably been able to ascertain, those investors are able to sustain the loss of their investment in the fund at the time of their investment.

The Commission, as part of its continued interaction and responsiveness to the market, has recently made clear that this declaration is not a warranty. In addition, on top of the close manager/investor relationship, to assist in understanding how comfort might be obtained to give this declaration, the Commission has included information in its answers to the frequently asked questions guidance it has provided (see below).

## Number of investors – promotion and admission

No limit has been placed on the number of investors to whom a PIF may be marketed. A feature distinguishing the PIF from certain similar regimes in other jurisdictions.

Absence of this limit means that having promoted to a potential investor who declines to invest does remove the ability for another investor to take that place. It also makes the PIF suitable for open-ended fund structures where investors may come and go.

There is no restriction on the nature or type of person who may invest in a PIF. In addition there is no minimum investment size stipulated, which is again more favourable than certain comparable regimes in other jurisdictions.

Although no limit on the number of investors to whom a PIF may be marketed to, a PIF may have as investors no more than 50 legal or natural persons holding an ultimate economic interest. This excludes where the investment is made by an investment manager acting as agent for a wider group of stakeholders - for example, a manager acting as agent for investors in a collective investment scheme, pension holders in a pension scheme or government funds (local or sovereign).

Subject to the 50 investor restriction referred to above, in the first year of the PIFs operation there is no restriction on the number of investors that may be added. In each subsequent rolling 12 month period a PIF may not add more than 30 new ultimate investors.

## Information particulars – Not required

There is no obligation on a PIF to have information particulars (such as offering memorandum, private placement memorandum, prospectus or listing particulars), nor to make certain stipulated disclosures. This is again more favourable that certain comparable fund regimes elsewhere.

That said, should there be a desire or need to have information particulars they may be prepared, although with the flexibility of no stipulated Guernsey content requirements. If prepared they will be the responsibility of the PIF Manager.

## Simple streamlined application process

The application process for a PIF registration and related PIF Manager licence is simple. The filing of a single form (Form PIF) with the Commission, together with the application fees and related personal questionnaires for certain persons, is all that is required.

The Form PIF requires certain outline information in respect of the PIF and the PIF Manager and includes declarations to be signed by the proposed PIF Manager and designated administrator (see below).

## Rules – those that apply and those that don't

A PIF is a regulated fund subject to the Private Investment Fund Rules, 2016 (the Rules). The

Rules are limited yet sufficient in nature, containing requirements for:

- managing conflicts of interests;
- submitting certain limited immediate notifications (such as a change of administrator or proposals to reconstruct or wind-up), quarterly statistical information and annual notifications; and
- submitting annual audited accounts and report.

As mentioned above, the PIF Manager will not be subject to conduct of business or capital adequacy rules.

In addition to the above the PIF Manager and/or designated administrator will be required to ensure compliance with Guernsey anti-money laundering and countering of terrorist legislation.

## Frequently asked questions – the Commission responds

Apart from the responsiveness it showed in implementing the PIF regime the Commission has continued to show that, not only is it a strong and well recognised regulator, it is a helpful regulator. It has produced on its website responses to a number of frequently asked questions in relation to PIFs. Such responses (currently found at https://www.gfsc.gg/industry-sectors/investment/faqs) provide useful guidance in support of the PIF Rules as to implementation and ongoing operation to PIFs.

## Designated administrator and other service providers

Finally, as regards service providers:

- a PIF is required to appoint a Guernsey licensed and domiciled administrator (known as the "designated administrator").The designated administrator will as part of signing the PIF application form confirm to the Commission that it has performed sufficient due diligence to be satisfied that the promoter is fit and proper;
- a closed-ended PIF is not required to appoint a custodian Whilst an open-ended PIF is required to appoint a custodian the Commission is prepared to accept that the designated administrator also takes that role while non-Guernsey domiciled custodians will also be considered;
- the PIF and the PIF Manager will need to appoint an auditor; and
- the PIF Manager is not required to have Guernsey based directors (although may practically

do so for tax or administrative purposes).

## Why wouldn't you use a PIF

In conclusion, for a fund that will have less than 50 investors at any point in time (noting the carve out discussed above), the PIF offers unparalleled flexibility for a regulated fund, as well as substance, cost savings and speed to market, all in a leading fund domicile. In a short period of time it has become a solution to many.

So why wouldn't you?

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## Meet the Author

Bryon Rees

Partner

Guernsey

E: bryon.rees@ogier.com

T: +44 1481 752312

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