

# Guernsey Financial Services Commission issues updated Prospectus Rules

Insights - 02/08/2018

## Introduction

On 6 July 2018, following a period of consultation, the Guernsey Financial Services Commission (the **Commission**) issued the Prospectus Rules 2018 (the **Prospectus Rules**) and the Registered Collective Investment Scheme Rules 2018 (the **RCIS Rules** and, together with the Prospectus Rules, the **Rules**).

The Rules will each be effective from 6 October 2018.

## Implementation

The Commission has stated that implementation of the new Rules may be achieved through the earlier of:

- a registered investment scheme initiating an annual review at an appropriate time to identify the changes required to comply with the enhanced disclosures; or
- any change of circumstances requiring filing to the Commission of a notification to investors, supplement or revised prospectus.

## Annual review

There is already an existing obligation for the designated administrator of a registered investment scheme to notify the Commission in writing each year of any change in respect of the information contained in the application form submitted for registration as a registered investment scheme or, in the absence of any change, notify the Commission by way of confirmation of no change.

The annual notification must be submitted by the designated administrator to the Commission via the online Submissions Portal (rather than a paper based submission) in accordance with the

registered investment scheme's online timeline. This annual notification requirement is now qualified if notification has already been made under new Rule 5.01(4) of the RCIS Rules, thereby avoiding unnecessary duplication.

New Rule 5.01(4) of the RCIS Rules will now provide that changes in contents of information particulars (prospectus) in any registered investment scheme should be disclosed in accordance with the mechanism provided for by Rule 6.01 of the Prospectus Rules.

### **Change of circumstances**

The new mechanism under Rule 6.01 of the Prospectus Rules provides that changes to any matter required to be included in a prospectus by virtue of Rules 3.11 to 3.15 of the Prospectus Rules (being certain disclosures relating to the designated administrator, designated custodian, directors, general partner, trustee and other parties) shall be immediately notified to investors in an appropriate format. This may be by an appropriate announcement on a website, regulatory announcement service, e-mail or letter. A copy of the notification shall be provided to the Commission by electronic means as soon as practicable.

Where the notification is in the new prospectus itself (where a new prospectus has been prepared), then the prospectus must be submitted to the Commission for registration as per the existing requirements for filing a prospectus under the Prospectus Rules. If a supplement has been prepared, then the combination of prospectus and supplement must comply with the requirements of Part 3 of the Prospectus Rules.

### **Enhanced disclosures**

As noted above, there have been some notable changes to the disclosure requirements for prospectuses as set out in Part 3 of the new Prospectus Rules, which include, amongst others, the following:

- Rule 3.0.3 (Goodwill, preliminary expenses and benefits) has been clarified to make it clear that disclosure is needed in respect of the value of goodwill and preliminary expenses, and the accounting treatment (as required by Rule 3.08(1)(b)), or of any benefit given to a promoter, in each case from the proceeds of the offer.
- Rule 3.16 (Significant Beneficial Ownership) restates the current Rule 3.16 (Control) and removes in paragraph (a) the need to also disclose those persons who have committed, as at the date of the prospectus, whether pursuant to the offer or otherwise, to acquire a significant beneficial ownership interest. It is worth noting here that the percentage threshold in the definition of "significant beneficial ownership" has also been increased from 5 per cent. to 15 per cent.
- In addition, a new paragraph (c) has been added in Rule 3.16 (Significant Beneficial Ownership) which requires disclosure of the names of those holding significant beneficial

ownership in any person in Rule 3.11 (Designated Administrator and Designated Custodian or Designated Trustee (in respect of a registered investment scheme), 3.13 (General Partner (in the case of a limited partnership)) or 3.14 (Trustee (in the case of a unit trust)) acting in relation to a registered investment scheme.

The disclosure requirements as regards interests in the registered investment scheme and the parties related to it contained in the Prospectus Rules continue to differ from those in The Authorised Closed-Ended Investment Schemes Rules 2008 (**ACIS Rules**), which currently have no minimum threshold limit for disclosure of interests in the shares of the authorised closed-ended investment scheme of each director and the main parties related to it.

There is currently, however, no such express requirement in the ACIS Rules to disclose details of those holding significant beneficial ownership in the general partner (in the case of a limited partnership), designated administrator, designated custodian or designated trustee (in the case of a unit trust) and which may not be public information.

Instead, the obligation under the ACIS Rules is currently limited to notifying the Commission forthwith of a proposed change in the ultimate or intermediate beneficial ownership of the main parties related to the authorised closed-ended investment scheme rather than this being a specific disclosure requirement to investors in the prospectus. It remains to be seen if the enhanced disclosure requirements in the new Prospectus Rules will have any bearing on the use of authorised closed-ended investment schemes versus registered investment schemes.

### **Non-applicability of Prospectus Rules for PIFs**

The Commission has stated that these Rules make clear that the Prospectus Rules do not apply to Private Investment Funds (**PIFs**), which can be seen by the inclusion of new Rule 2.01(2) (b) in the Prospectus Rules. This is a helpful clarification and aligns the Prospectus Rules with the Private Investment Fund Rules 2016 which do not require a prospectus to be prepared for a PIF. For further information on the PIF regime see: [Simplicity, flexibility and speed to market – The Guernsey Private Investment Fund](#)

### **Closed-ended registered investment schemes**

Further, the Commission has stated that it has ensured that these new Rules make clear that revisions to a prospectus in a closed-ended registered investment scheme may be in the form of a notification to investors, thereby providing sufficient disclosures to investors and the Commission without incurring exceptional costs (i.e. the costs involved in publishing a new prospectus or supplement). This is a helpful clarification which will be welcomed by advisers, in particular in respect of London Stock Exchange traded closed-ended registered investment schemes as it gives greater certainty in transactions whereby a prospectus may not be required under the UK's Prospectus Rules for a secondary issue of shares, but, until the issue of the new Rules, the position in Guernsey was less clear.

## **Other notable changes**

Paragraphs (10) through to (12) of Rule 4.01 of the RCIS Rules have also been deleted which provide certain safe harbours for deeming that the 'arm's length requirement' is satisfied in respect of best execution on exchange (paragraph (11)) and independent valuation (paragraph (12)). The determination will now lay solely in the hands of the directors rather than the RCIS Rules prescribing this.

Another notable change is found in paragraphs (1) and (2) of Rule 5.01 of the RCIS Rules:

- firstly, the reference to the designated administrator being responsible for preparing the prospectus has been removed; and
- secondly, instead, the designated administrator is now expressly required, as far as it is reasonably able, to monitor compliance with Part 5 – Information Particulars of the new Prospectus Rules.

This compliance monitoring duty in respect of prospectuses is in line with the designated administrator's responsibility in respect of authorised (open-ended) Class B collective investment schemes under Rule 2.12 of The Authorised Collective Investment Schemes (Class B) Rules 2013. It will be interesting to see if this new compliance monitoring duty will have any impact going forward on how designated administrators will approach the launch and ongoing monitoring of registered investment schemes, especially as there is currently no such express equivalent monitoring obligation contained in the ACIS Rules in respect of prospectuses of authorised closed-ended investment schemes.

## **What actions (if any) needs to be taken?**

- Existing derogations will continue to apply, to the extent applicable, and so no further action is required in this regard.
- The current Rules will continue to apply to any outstanding obligations of any person as at the commencement date for the new Rules (being 6 October 2018).
- Any prospectus in circulation on commencement of the new Prospectus Rules shall continue as if the current Prospectus Rules were in force and changes shall take effect in accordance with Part 6 of the new Prospectus Rules.
- Registered open-ended investment schemes are advised to initiate an annual review before 6 October 2018 in order to identify the prospectus changes required to comply with the enhanced disclosures in the new Rules or, alternatively, consider the new disclosures to be implemented upon the next change of circumstances which would require filing to the Commission of a notification to investors, supplement or revised prospectus under the new Rules.

- Registered closed-ended investment schemes contemplating additional fundraising should note that revisions to the previous prospectus may be in the form of a notification to investors where a new prospectus or supplement are not otherwise being prepared.

If you are unclear as to what action you should be taking and require further guidance, please contact the Ogier team who will be delighted to assist.

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