Guernsey Expands Private Investment Funds Regime

April 2021

The Guernsey Financial Services Commission ("**GFSC**") has updated its Private Investment Fund ("**PIF**") regime to expand the available PIF product options.

The Private Investment Fund Rules, 2021 (the "**PIF Rules 2021**") were issued on 20 April 2021 together with guidance, and replace with immediate effect the prior Private Investment Fund Rules, 2016.

Three alternate PIF routes

Under the new PIF Rules 2021, there are now three alternate routes available for PIFs in Guernsey:

Route 1 – the POI Licensed Manager PIF: This is the existing Guernsey PIF which requires the PIF to have a Guernsey manager that is licensed by the GFSC. All PIFs registered prior to 20 April 2021 will continue to be registered under this route.

Route 2 – the Qualifying Private Investor PIF: This is a new route that does not require a GFSC-licensed manager. To use this route all investors will have to meet qualifying investor criteria which are designed to ensure investors are restricted to suitably sophisticated investors.

Route 3 – the Family Relationship PIF: This is also a new route that does not require a GFSC-licensed manager. This route enables a bespoke private wealth structure to be created as a PIF, requiring a family relationship between investors.

Although Route 2 and Route 3 do not require the appointment of a GFSC-licensed manager, one can be appointed if desired. Where a PIF takes the form of a limited partnership the general partner will generally need a licence even if the PIF is a Route 2 or Route 3 PIF (although note below regarding certain GFSC rules not applying to that licensed general partner). Where the manager or general partner needs to obtain a licence, the application is made at the same time as the PIF registration application and is fast-tracked on the same one-business day turnaround.

Points common to all three routes

Under all three routes:

- there is a one business day-turnaround at the GFSC for the PIF application;
- there are no requirements for a private placement memorandum or other information particulars (a "PPM"), although it is common for a PPM to be provided to potential investors;
- the PIF can be closed-ended or open-ended;
- the PIF must be audited;

- where the Guernsey manager/general partner is licensed it is not subject to certain GFSC rules which typically apply to licensed managers, including rules relating to capital adequacy, although it must be audited;
- conflict of interest requirements apply to the directors of the PIF manager, the directors of PIF (where the PIF is a company), the directors of the general partner of the PIF (where the PIF is a limited partnership) and the directors of the corporate trustee (where the PIF is a unit trust); and
- where the manager/general partner is applying for a licence it must provide a completed business risk assessment.

The points unique to each route are summarised below.

Route 1 – the POI Licensed Manager PIF

The PIF must have a GFSC licensed manager in Guernsey and the application to the GFSC for the licence is made at the same time as the application to register the PIF.

As part of the PIF application, the PIF manager must provide the GFSC with declarations on the ability of the investors to assume loss.

A Route 1 PIF retains the investor cap of 50 legal or natural persons holding an ultimate economic interest in the PIF, although where the investment is made by an investment manager acting as agent for a wider group of stakeholders that manager is treated as one investor for these purposes. There is no cap on the number of potential investors that the PIF can be marketed to.

In addition to the cap of 50 investors, there is a "rolling cap" of 30 investors being admitted in the previous 12 months, although this does not apply for the first 12 months commencing on the date of the admission of the first investor.

Route 2 – the Qualifying Private Investor PIF

A Route 2 PIF is only open to "Qualifying Private Investors" ("QPIs"), who are able to evaluate and bear the risks and strategy of investing in the PIF. QPIs are either a "Professional Investor", an "Experienced Investor" or a "Knowledgeable Employee".

As part of the PIF application, the PIF's administrator must provide the GFSC with a declaration that effective procedures are in place to ensure restriction of the scheme to QPIs.

A Route 2 PIF has an investor cap of 50 legal or natural persons holding an ultimate economic interest in the PIF, and where the investment is made by an investment manager acting as agent for a wider group of stakeholders that manager is not treated as one investor for these purposes and is looked through for the purposes of the cap. There is a cap of 200 on the number of potential QPIs that can be offered the opportunity to invest in the PIF.

Although there is no PPM requirement, investors must be provided with and acknowledge a disclosure statement covering (at a minimum) risk disclosures, regulatory status of PIF and investor suitability.

Route 3 – the Family Relationship PIF

A Route 3 PIF is only open to investors who either share a family relationship or are an "eligible employee" of the family in question. The PIF cannot be marketed outside the family group.

As part of the PIF application, the PIF's administrator must provide the GFSC with a declaration that effective procedures are in place to ensure that all investors fulfil the family requirement.

Walkers comment

The GFSC released the PIF Rules 2021 following a consultation issued in December 2020 on amendments to the PIF regime. That consultation included Route 2 and Route 3 and due to the supportive responses the GFSC has now issued the PIF Rules 2021 with immediate effect.

We expect that the removal of the requirement for a GFSC-licensed manager under Route 2 and Route 3 will be of interest to a number of promoters as it reduces the overall formation and on-going costs of the PIF whilst affording the appropriate level of regulation.

Although the PIF Rules 2021 have only just come into force, and therefore it is still "early days", we would expect that Route 2 will become the preferred option in Guernsey for launching a PIF. Route 2 allows a PIF to become self-managed (which is likely to reduce costs, both on establishment and on an ongoing basis), but still allows the flexibility of appointing a separate manager if desired. Further, the requirement that it is open to QPIs only is unlikely to present much of an additional barrier (and indeed is a welcome clarification). In our experience, the former requirement that the manager provide declarations to the GFSC that investors could bear the risk of loss of their entire investment meant that many managers were previously applying similar criteria to investors as will now be required for determining whether an investor is a QPI.

The GFSC has noted that the PIF Rules 2021 do not widen or alter the definition of "collective investment scheme" for Guernsey law purposes, so that for example an investment club of family investors would still not need to be regulated as a PIF.

Overall the PIF Rules 2021 are a welcome addition to Guernsey's suite of investment fund products, providing additional flexibility that further strengthens Guernsey as an already top-tier fund jurisdiction, given its strong legal, regulatory, transparency and supervisory framework for fund, corporates, foundations and trusts (further details on that framework can be found here).

About Walkers private investment fund team

Walkers has a dedicated private investment funds team in Guernsey who work with a broad base of clients on a diverse range of products. We can provide a complete package of Guernsey regulatory, corporate, partnership and tax advice in relation to fund formation and on-going advice during the investment fund life-cycle. Our Guernsey team works closely with our investment funds experts across our global network to ensure that each client obtains the appropriate multi-jurisdictional advice.

Authors

For further information please speak with your usual contact at Walkers or contact:

Matt Sanders
Group Partner, Guernsey
T: +44 (0) 1481 748 914
E: matt.sanders@walkersglobal.com

Kate Storey
Partner, Guernsey
T: +44 (0) 1481 748 924
E: kate.storey@walkersglobal.com

Chris Hutley-Hurst
Senior Counsel, Guernsey
T: +44 (0) 1481 758 950
E: chris.hutley-hurst@walkersglobal.com