



Guernsey - The Private Investment Funds Regime

Introduction

The Private Investment Fund Rules ("PIF") regime was updated by the Guernsey Financial Services Commission ("GFSC") in 2021 to expand the available PIF product options. PIFs are governed by the Private Investment Fund Rules and Guidance (2), 2021 (the "**PIF Rules 2021**").

Three alternate PIF routes

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

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

Route 2 – the Qualifying Private Investor PIF: This is a 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 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 with a Guernsey general partner, the general partner will 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:

1. there is a one business day-turnaround at the GFSC for the PIF application;
2. 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 (although there is a disclosure statement requirement for a Route 2 PIF);
3. the PIF can be closed-ended or open-ended;
4. the PIF must be audited;

5. where the Guernsey manager/general partner is licensed it is not subject to certain GFSC rules and requirements which typically apply to licensed managers, including rules relating to capital adequacy and conduct of business, as well as the requirement to be audited;
6. 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
7. where the manager/general partner is applying for a licence it must provide a completed business risk assessment.

Points unique to each route

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 sustain any losses on their investment in the PIF.

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.

A Route 2 PIF that has no separate manager will be a "self-managed fund" for economic substance purposes and will be subject to economic substance requirements in Guernsey.

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.

A Route 3 PIF is a viable option for a regulated family office, although it is worth noting that a family office or investment club of family investors does not need regulating in Guernsey.

A Route 3 PIF that has no separate manager will be a "self-managed fund" for economic substance purposes and will be subject to economic substance requirements in Guernsey.

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, tax and economic substance 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.

Updated: March 2022

For further information please refer to your usual contact or:

Guernsey - **Matt Sanders**, Group Partner | matt.sanders@walkersglobal.com | +44 (0) 1481 748914

Guernsey - **Kate Storey**, Partner | kate.storey@walkersglobal.com | +44 (0) 1481 748 924

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

Guernsey - **Jessica Robinson**, Senior Associate | jessica.robinson@walkersglobal.com | +44 (0) 1481 748 932

Guernsey - **Angela Proctor**, Associate | angela.proctor@walkersglobal.com | +44 (0) 1482 748 903

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