

**Martin Tolcher** of Legis Fund Services looks at the implementation of new regulations for Guernsey funds from an administrator's perspective

# It's all change

The working party chaired by advocate Peter Harwood, which published its report in June 2006, made several recommendations pertaining to the simplification of fund registration. In January 2007, the Guernsey Financial Services Commission (the Commission) confirmed that, with effect from 1 February, 2007, new regimes would be put into place for:

- Registered closed-ended investment funds; and
- Principal managers.

This article considers the practical consequences and positive benefits of these changes, particularly from a Guernsey administrator's perspective.

## Closed-ended investment funds

To date, closed-ended, as well as open-ended, investment funds in Guernsey have been subject to regulation (and regulatory consent) by the Guernsey Financial Services Commission (the Commission). The new regime in respect of the registration of closed-ended funds makes several fundamental changes that accelerate the consent process.

### ■ Responsibility

Under the new regulatory regime, rather than the Commission being responsible for the approval of the promoter, investment manager and prospectus or offering document of the fund, the onus falls upon the Guernsey administrator.

Thus, before submitting the relevant documentation to the Commission, the administrator must undertake sufficient due-diligence enquiries and checks on the parties referred to above, in accordance with the Guidance Note, dated February 2007, in respect of registered closed-ended investment funds issued by the Commission.

As administrators, we consider it of paramount importance for the introducers of new business to Guernsey (for example, fund managers) and/or their advisers to look to appoint, and involve, the Guernsey administrator early in the establishment process, rather than considering and determining the appointment just prior to making a submission to the Commission. In this way, the administrator, with the valued assistance of the Guernsey lawyers, can begin its due-diligence processes so that it is positioned to make the application to the Commission when required.

It is also incumbent upon the administrator to ensure that the fund will not be offered direct to the public within the bailiwick of Guernsey. Further, it needs to satisfy itself that the prospectus or offering document contains adequate disclosures.

### ■ Streamlined approach

Once the administrator is comfortable that it can report positively with respect to all of the above aspects, it can then submit duly completed documentation to the Commission. In effect, the same documentation needs to be included with this submission that would have been completed and dealt with historically by the Guernsey lawyers when seeking approval for a regulated fund, namely:

- i) Forms GFA and APC;
- ii) Form PQ for all relevant individuals; and
- iii) Certified final copies of the prospectus or offering document, application or subscription form, constitutive documents and all material agreements.

Additionally, the administrator must make three declarations, formally

confirming that it has done the tasks referred to in the paragraphs above.

### ■ Certainty

Perhaps the change of most immediate interest to the introducers of fund business to Guernsey is how long it takes the Commission to give the necessary consent. This remains up to six weeks for regulated funds. For registered funds, the Commission will issue the necessary consent under the Control of Borrowing Ordinance within three working days of receipt of the Form REG and accompanying documentation.

In the short time since the process has been introduced, reaction has been positive. This was illustrated at a seminar in London in March hosted by GuernseyFinance and the Guernsey Investment Fund Association, which was well attended by fund industry practitioners.

In summary, the features and benefits of this regime for registered closed-ended investment funds are:

- Responsibility – now placed upon the administrator to review;
- Streamlined application – a one-stage process, rather than the previous three-step one; and
- Certainty – once documentation has been submitted, consent is given within three working days.

## Principal manager

Historically, it has been necessary for open-ended funds domiciled in Guernsey to have a locally based principal manager, traditionally 'run' by the Guernsey administrator, ensuring that the decisions (or recommendations) of the onshore investment manager/adviser are replicated within Guernsey.

The removal by the Commission of the requirement to have a principal



manager enhances the ability of the structures to have greater flexibility, as well, of course, of reducing the overall fees and costs of running such an entity.

However, it is interesting to note that there remains a trend among fund managers to establish a Guernsey principal manager, with a physical presence on the island. This may be considered to be driven, at least in part, by the need to demonstrate that mind, management and control are being exercised offshore from a UK, or other jurisdictional, tax perspective. This gives rise for further opportunities for Guernsey administrators to assist in this regard.

Specifically, not only can the Guernsey administrator provide all aspects of administration to the principal manager, but also dedicated office space, communications and employee resources. Increasingly, enquiries are being made to determine what appears to be perceived as a cost-effective way of beginning to establish a full physical presence of the fund manager in

Guernsey, with the ultimate aim of moving the successful individuals responsible for the investment management decision-making process to Guernsey, establish an office and employ staff for that company.

**Conclusion**

The above changes illustrate the continued importance of the role of the administrator for funds to be serviced from Guernsey. It is needed not only after a fund has been launched to provide ongoing administration services, but also at the outset, thus enabling the Guernsey funds and linked management companies to be established and authorised in the most efficient manner.

These two new regimes further demonstrate the desire of the fund industry in Guernsey to move forward in enhancing its share in an increasingly competitive marketplace. Allied to this is the responsive, pragmatic and flexible approach of the Guernsey Financial Services Commission, thus enabling the

necessary changes to be implemented in a timely and efficient manner.

Guernsey remains a jurisdiction in which there is a high skill base among the specialist administration providers that continues to engender confidence among the introducers of new business. These changes enable such introducers of funds business to see why Guernsey should remain high on their list of jurisdictional locations where their funds can be domiciled and managed in one central location.



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