

Registered Closed-ended Investment Funds

Background

A Working Party chaired by Advocate Peter Harwood was appointed in 2005 to consider investment sector legislation and regulation and to report to the Guernsey Financial Services Commission and to the Commerce and Employment Department of the States of Guernsey. In its report published in June 2006 the Working Party proposed the introduction of the concept of Registered Investment Funds, being either open-ended or closed-ended investment funds that would not be regulated by the Guernsey Financial Services Commission. Under the present legal arrangements, provisions for regulating open-ended funds are contained within the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (“the POI Law”). Closed-ended funds, by contrast, are dealt with under the Control of Borrowing (Bailiwick of Guernsey) Ordinance, 1959 as amended with the Commission using its delegated authority from the Policy Council to approve fund creation and the contents of a prospectus or other offering document. In order to implement the Working Party’s recommendations as far as closed-ended funds are concerned, it is proposed ultimately to bring closed-ended funds within the provisions of the POI Law on a parallel basis to open-ended funds

Proposal

Although most of the proposals in the report produced by the Working Party can only be implemented when legislation is enacted, there are certain steps which the Commission can take purely through policy change. Creation of the registered closed-ended fund sector is one such feature.

The Commission proposes to introduce a framework applicable to registered closed-ended funds with effect from 1 February 2007. Such framework is seen as a development of the approach taken by the Commission in respect of Qualifying Investor Funds (“QIFs”) introduced in February 2005, which over 90 funds have utilised. The significant difference between the proposed registered funds and QIFs is that the only restriction relevant to investors in registered funds is that the fund should not be offered directly by the issuer (that is, the fund) to the public within the Bailiwick of Guernsey although it could be listed on a stock exchange. This restriction is in line with the recommendation made by the Working Party referred to above in relation to the introduction of the concept of registered funds.

It is proposed that, in addition to the submission of relevant documentation relating to the fund together with standard Commission application forms, the Guernsey licensed service provider will warrant to the Commission that:

- (i) they have performed sufficient due diligence to be satisfied that the promoter and associated parties are fit and proper;
- (ii) effective procedures are in place to ensure that the fund is not offered directly by the issuer to the public within the Bailiwick of Guernsey; and

- (iii) the status of the Registered Closed-ended Investment Fund is specifically referred to in the prospectus, offering document or equivalent so that it is made clear that neither the Commission nor the States of Guernsey Policy Council have reviewed the prospectus, offering document or equivalent and that neither the Commission nor the States of Guernsey Policy Council takes any responsibility for the financial soundness of the fund or for the correctness of any of the statements made or opinions expressed with regard to it.

The following draft proposed documents are available here

- [Application Form for fund \(Form REG\)](#)
- [Guidance Document](#)
- [Pro-forma consent letter to be issued by the Commission in respect of a Registered closed-ended investment fund](#)

Next Steps

The Commission is seeking comment on the proposals and the draft proposed documents from investment firms, professional advisers and the public in Guernsey and elsewhere.

The closing date for comments is **Wednesday 24 January 2006**. Comments should be sent to:

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