



Summary of the Issues of the Harwood Report on the Investment Sector

Review of Investment Sector Legislation and Regulation

A committee chaired by Advocate 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. Its terms of reference were:-

“To consider the investment industry in the Bailiwick of Guernsey and the conditions required for its continued prosperity.

The review will include, but not be limited to, the legal and regulatory framework as well as aspects of public policy relating to the industry, and will, where appropriate, make recommendations for change.

Consideration will be given to the statutory objectives contained in the Protection of Investors Law and the rules and regulations made under it, as well as the Commission’s powers, duties and responsibilities. The review will also consider aspects of Company Law and other enactments which are relevant to the development of investment business. Business environment dependencies, such as telecommunications, would also be in the scope of the review.”

The Committee’s report was delivered to the Commission and to the Commerce and Employment Department on 21 March 2006. The Report has now been considered in detail by the Finance Sector Group which has endorsed its conclusions and proposals. The *conclusions* were that:-

Funds

- (i) the existing COBO ordinances should be repealed and replaced with legislation – applicable to offers of securities by all Guernsey entities – dealing generally with minimum criteria for disclosure of information;

- (ii) the distinction between open and closed-ended funds was probably no longer justified;
- (iii) the regulatory focus should concentrate less on individual funds and more on licensees providing services to such funds.

The working party did not generally endorse proposals to allow Guernsey-domiciled funds to be administered by non-Guernsey entities, but recognised that the current outsourcing policy, which allows Guernsey services providers to use non-Guernsey resource for day-to-day activities, should be kept under review.

Investment Generally

The Committee felt that an economic benefit criterion was inappropriate in a regulatory law. Furthermore, in order to attract intellectual capital to the Bailiwick, the Committee noted that two principal issues – tax capping, and reform of the current housing licence system – needed to be addressed.

The Committee's detailed *proposals* are to:-

- (i) repeal the COBO ordinances and replace them with a generic "Prospectus" law, applicable to all Guernsey entities, setting out minimum disclosure criteria for Offering Documents;
- (ii) take the funds provisions from the existing Protection of Investors Law and modify them to become a generic Funds Law applying to both the open and closed-ended sectors;
- (iii) establish two categories of fund – Regulated and Registered – and to remove the current requirement for Principal Managers. All funds, whether Regulated or Registered, would have to appoint a locally licensed administrator. Registered fund prospectuses would have to make it clear that the fund was not regulated by the Commission;
- (iv) Guernsey service providers should be permitted to offer services to non-Guernsey vehicles, subject only to a notification requirement to the Commission;
- (v) the current Designated Persons and Licensees (Financial Notification Resources, Conduct of Business and Compliance) Rules should be amalgamated;
- (vi) the custody function should clearly be seen as a trustee/oversight role, which could be separated from the activity of custody/safekeeping. Capital adequacy requirements should also be reviewed;
- (vii) categories of regulated activity set out in the Protection of Investors Law should be reviewed. The report also noted that there was some overlap between the regulated activities set out in the various regulatory laws, and suggested this could also be reviewed.

Next Steps

Implementing the proposals of the Harwood Committee will involve both legislative change and policy and rule amendment. The main elements of the process therefore appear to be:

- (i) amending the Protection of Investors Law to permit closed-end funds to be brought within the prior authorisation and regulation regime similar to that applied to open-ended funds;
- (ii) extending exemption powers under the Protection of Investors Law to take “Registered” open and closed-end funds out of the prior authorisation and regulation regime, subject to notification requirements;
- (iii) the Commission and industry to establish appropriate sets of fund rules for:
 - (a) “Regulated” closed-end schemes;
 - (b) notification requirements for registered funds;
 - (c) the exemption of inter-professional business;
- (iv) amending the Protection of Investors Law by deleting section 3(2)(d) of the Law which requires the Commission to consider economic benefit in considering whether to grant a licence.

The full text of the report can be found on the Commerce and Employment Department website at www.gov.gg and the Commission’s website at www.gfsc.gg. Any comments should be sent to the Legal Director, Finance Sector Development at the Commerce and Employment Department, C/o GuernseyFinance LBG, PO Box 655 North Plantation, St Peter Port, GY1 3PN no later than the close of business on Friday 7 July 2006.