

GREAT FUND INSIGHTS

Selecting your Fund Domicile

Channel Islands Part I – Guernsey

Kamar Jaffer

Hello, and welcome back to Great Fund Insights: Selecting your Fund Domicile, our video podcast series featuring an expert law firm in an offshore jurisdiction. I'm Kamar Jaffer, a Middle East funds and asset management partner, and I will be moderating today's conversation. During this series, our expert panellists will explore some of the benefits and legal and regulatory considerations for each offshore location. We will also cover frequently asked questions on how to choose a domicile for your fund and why offshore jurisdictions have become a key choice for global alternative investment funds.

Today we will be discussing topical fund trends in the Channel Islands, focusing on Guernsey in Part I and Jersey in Part II. I am delighted to introduce our guest speaker, Tim Clipstone, Partner at Ogier in Jersey. Tim is an experienced funds and regulatory and corporate lawyer, with a particular focus on all aspects of the lifecycle of hedge, private equity, venture capital funds and alternative asset management structures domiciled in Guernsey.

Tim, thank you for participating in this series. I'm delighted to have you with us today, to learn the ins and outs of the legal and regulatory considerations for Guernsey. So let's kick off with the first question. The Channel Islands, and in our case Guernsey, is an established fund formation jurisdiction: what are the types of funds that you have been seeing come to markets?

Tim Clipstone

Thank you very much. So we're seeing still a steady flow of funds coming to Guernsey. I think it's fair to say we're seeing a good number of VC funds, and a number of infrastructure funds, established here. Some interesting digital assets as well. Obviously, those are quite exotic still, as pure play funds. We also continue to see private equity structures being set up, both for large, established managers, but also for new managers as well.

Kamar Jaffer

And what is the type of vehicle that is commonly used? Are there any innovative or creative structures that you have seen come to market?

Tim Clipstone

The most common vehicle for unlisted structures of all types is the GPRP structure. Obviously, when funds are looking to be listed, then it's usual to see those structured as companies, and in fact Guernsey's got a very strong track record of listing funds, on the London Stock Exchange in particular, and there are quite a large number of those, and we deal with those relatively frequently. I think in terms of innovative structures, we still see some – and this isn't innovative at all, this is the original fund types – we still see quite a few unit trusts being formed. That's partly, I think, because some investors understand and trust them, but also some investors prefer those for the tax treatment as well. But I think they do like the fact that there is a trustee in place separate to the manager.

Innovative structures: we have protective cell companies, which you do see used as fund vehicles; they're also often used as co-investment vehicles as well that invest alongside the main funds. That's actually quite useful because you can stream individual investments and/or investors' portfolios without them commingling and therefore without separate regulation, albeit our regulatory system actually allows you to put structures that are associated with the main fund into a basket registration in most cases – closed-ended funds – and that allows the entire structure to be seen as one unit, one final unit. In terms of the innovative structures, that is...one of them is quite useful and not necessarily available in all jurisdictions, although in most international finance centres, but we are also seeing quite a few structures that are fund of one, i.e. single investor; almost manage to count, but slightly more sophisticated than that, potentially, style investments and/or using PCC structures again for making specific investments, rather along the lines of an investment club. Again that doesn't necessarily mean it falls into the definition of a collective investment scheme, and so there's quite a lot of structuring in Guernsey that looks and feels a little bit like a fund but actually doesn't qualify as such. It is actually an incredibly flexible jurisdiction for that.

Kamar Jaffer

And what are some of the key regulatory structuring considerations?

Tim Clipstone

Well, without going into too much detail, basically when you look at a GP/LP structure, the fund itself would be the limited partnership. That would be a registered or authorised fund – and I will go into what that means shortly – but the general partner would generally be regarded also as a licensable entity, if it is in Guernsey, and they often are licensed under our protection of investors law, as a manager. There are some exceptions and exemptions around that, but that would be the standard consideration. With a company, of course, you can have self-managed funds, which works quite well with the AIFMD regime sometimes, and also just generally depends where the risk and discretionary management is sitting, but more commonly you would have a separate manager, whether onshore or in Guernsey, for a corporate that would be engaged by our contract. You also need to have an administrator for a Guernsey fund, in all cases, and that administrator needs to be a licensee in Guernsey, and we'll come onto them a bit later, a bit more, about their role; and then if you're an open-ended fund you would need a custodian. Now, primarily or prima facie, it needs to be a custodian domiciled here and licensed here in Guernsey, but there are very common derogations from that requirement for hedge funds, and if you can demonstrate that there isn't an option here on the island to get an appropriate custodian, and in fact that has been the case for the digital asset funds that we have here, which generally have a custodian off island.

Kamar Jaffer

And what are the key requirements that apply to private funds?

Tim Clipstone

Private funds: well, when we talk about private funds, we don't have a public fund versus private fund distinction, we have two types of regulated structure. One is the authorised fund, which is a fully supervised fund, and we have various categories of those; that is one where the regulator, the Guernsey Financial Services Commission, actually looks over the fitness and propriety of the promoter, manager etc., of the parties involved and the terms of the offer, and you have to comply with the appropriate rules. Those, in a sense, are our public funds in that those are designed to fit neatly into something like a UCITS or a similar style offering. We also have what are registered funds – and these I suppose, in a sense, are our private funds, albeit registered funds can also be listed publicly on the markets, and many often are – and there are two principal types of those, the registered collective investment scheme, which are commonly known as RCIS, and the private investment funds, of which there are three types. It's always very complicated on these; there are multiple flavours of different funds.

So the registered collective investment schemes, the RCIS, you have to comply with prospectus rules, or, if it's listed, then you will comply with the rules of the exchange, which would qualify for that. With the private investment funds, so the PIFs, as they're known, they don't actually have to have a prospectus or a fund document. There are three different types of those, and I won't go into too much detail, but basically there's a standard PIF, which requires a manager in Guernsey, and that is limited to 50 investors, and basically the expectation is that there is a close connection between the manager and the investors, such that the managers can say that the investors are able to bear the loss of their investment. There's a second type, which is a qualifying investor fund, which is effectively professional sophisticated investor-type investors, and that is also limited to 50 investors – the manager on that one doesn't have to be in Guernsey. And then there's a family, basically a family office structure as well, where all the investors are from the same family or are employed by that family, and again they don't need a prospectus, and it's limited to 50 investors.

Kamar Jaffer

You mentioned administrators and custodians, Tim, can you describe the eco-system in Guernsey?

Tim Clipstone

Yes, certainly. Lawyers aside – joking! – the administrators and auditors, the custodians, and also I think I ought to mention our non-executive director pool, are extremely... they are all extremely deep benches; there are multiple international administrators in particular who started off life here or had major presences here. I won't name and shame but there is a very, very strong pool of resource here, and I think that is the case, and I will shout out to Josie as well in Jersey, and I think that is something the Channel Islands is well known for, is the strength of their administration talent.

Custodians: we have multiple banks, investment banks, who have branches here, and again I won't name and shame but there are many of the names you'd expect that are here, that are able to service open-ended structures – and closed-ended for that matter, even though they are not required to do so but they commonly do anyway – and, as I said, our NED pool, our non-executive director pool, is extremely strong. There are both ex-professionals who have retired here, a lot of people who have come out of the City and retired to Guernsey, and those with banking, legal, accounting and administration experience, that provide, I think, a very strong bench for any managers looking to set up a fund here.

Kamar Jaffer

And what are some of the legal and regulatory developments that you see coming on the horizon in Guernsey?

Tim Clipstone

Well, one thing we see is...there is obviously the push towards various parts or aspects of ESG. So Guernsey was the first to have a badged green fund, and the Guernsey Green Fund – in fact I have got a call next week on a new one for that – it is popular, it has not taken off quite, I think I'll have to admit, quite in the way that we'd hoped, but it is a very valid and well recognised brand. The reason it didn't take off quite as strongly was that the SFDR European Directive came in with something similar shortly after we launched our product and I think the challenge is actually to make sure that those two slot together harmoniously, effectively, and I think they do; they do slot together, but it is a case of just explaining the additional benefit of having a Guernsey Green Fund stamp.

There is also a natural capital fund coming very shortly which is along the same lines, which is effectively you have to show that your investments are within appropriate categories and pre-approved categories; it is verified monthly by the administrator and you are not allowed to invest in certain prohibited pools which are seen as contrary to the goals of natural capital and environmental sustainability, so that is something coming down the track, and we are quite excited about that. We have also got some anti-green washing legislation coming in as well. Obviously that is a problem in that environmental disclosure realm is that people...it is difficult to define what is a valid disclosure, what is green, what isn't green, and there is a real attempt to try and codify that here in Guernsey going forward.

We have also got some various additional pieces of regulatory legislation that are currently being consulted on, mainly around making sure that appropriate anti-money laundering controls and procedures are in place for not just regulated entities but entities doing commercial lending, things like that, but principally we are not expecting a huge change in what we have but largely a few changes around the edges just to really sharpen our product line around the ESG side of things.

Kamar Jaffer

Well, Tim, thank you very much for an insightful conversation.

Tim Clipstone

No problem.

Kamar Jaffer

So we will continue discussing the legal and regulatory considerations for the Channel Islands in the next podcast, this time focusing on Jersey and featuring your colleague, Sophie Reguengo, so thank you to all our listeners for tuning in and have a good day. Thank you.

Tim Clipstone

Thank you very much.