



Non-doms are welcome - a guide to non-Guernsey funds

Introduction

The non-Guernsey funds regime offers fund promoters the opportunity to establish funds in jurisdictions that they may be familiar with, or that may have regulatory or tax benefits, whilst using the expertise of Guernsey based administrators, managers or custodians. It also offers Guernsey administrators, managers, custodians and other investment business service providers the opportunity of accessing the funds markets in other jurisdictions for the provision of their services.

As a result, Guernsey's non-domiciled funds regime has seen steady growth during the last three years. Since June 2008 the number of non-domiciled open-ended funds with a Guernsey administrator, manager or custodian has risen by over 7% (the statistics for Guernsey's other types of non-domiciled funds are not reported). Guernsey now has approximately 325 non-domiciled open-ended funds that either have a Guernsey administrator, manager or custodian, with over 55% of those funds domiciled in the Cayman Islands, nearly 16% in the British Virgin Islands, nearly 8% in Bermuda and 7% in the USA.¹ With the recent return to growth of the offshore funds industry there are further opportunities for Guernsey's non-domiciled funds industry to continue to grow.

The advantages of using a Guernsey administrator, manager or custodian include:

- Geographical proximity to London and continental Europe;
- Outside the European Union;
- London time-zone;

- Well-established, experienced and wide-ranging fund administration across a range of asset classes;
- Channel Islands Stock Exchange based in Guernsey;
- Internationally recognised jurisdiction;
- A mature financial services sector;
- Experienced professional legal and accounting infrastructure; and
- Expected to comply with the Alternative Investment Fund Managers Directive to enable EU domiciled alternative investment funds to be managed in Guernsey and for Guernsey fund managers to market funds in the EU using the proposed passport regime (it is also expected that Guernsey domiciled funds will be able to be marketed in the EU using the passport regime). Currently non-Guernsey as well as Guernsey funds may be marketed in the EU using member-states national private placement regimes.

The non-Guernsey funds regime can be separated into three separate areas of (i) exempt funds, (ii) non-Guernsey open-ended funds and (iii) non-Guernsey closed-ended funds.

Exempt funds

The following funds may use Guernsey licensed administrators, managers and custodians without needing to be registered or authorised in Guernsey ("**Exempt Funds**"):

- Unit trust schemes domiciled in the UK (including Northern Ireland);
- UCITS schemes domiciled in the Republic of Ireland (as of July 2011 there were 3,017 UCITS funds domiciled in Irelandⁱⁱ);

- Collective investment schemes authorised in Jersey and which have a regulated functionary; or
- Schemes authorised in the Isle of Man within the meaning of the Financial Supervision Act 1988 (although the Financial Supervision Act 1988 has been repealed and replaced by the Collective Investment Schemes Act 2008, the Guernsey Financial Services Commission should normally accept schemes authorised in the Isle of Man as Exempt Funds if they are the equivalent to a Guernsey Class A scheme).

Although local administrators, managers and custodians are not required to give any formal notice to the Guernsey Financial Services Commission (“GFSC”) that they intend to provide services to an Exempt Fund, they are asked to advise the GFSC by email of that intention together with a copy of the fund’s prospectus, latest annual report and evidence that the fund is authorised in the country where it is domiciled to ensure that they are acting in an open and co-operative manner.

The activities performed by the Guernsey administrator, manager or custodian to an Exempt Fund must be in accordance with the requirements subject to which those activities may lawfully be carried on in the country where the fund is domiciled.

No fees are payable to the GFSC in respect of a local administrator, manager or custodian providing services to an Exempt Fund.

Although strictly speaking there is no limit on the number of services that may be provided to an Exempt Fund from Guernsey, if two or more services are provided to the Exempt Fund from Guernsey there may be a risk that the actual domicile of the fund may be challenged (i.e. arguments may be raised that the fund is in fact domiciled in Guernsey), which may have unintended legal and tax consequences for the fund and its investors and regulatory issues for the Guernsey services provider.



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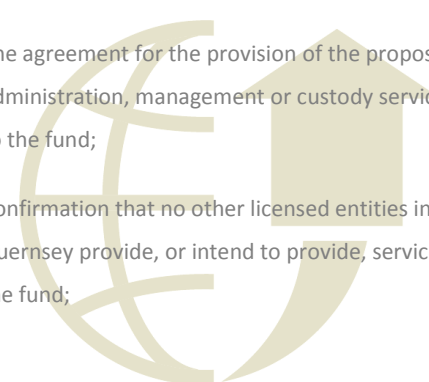
Non-Guernsey open-ended funds

For all other non-Guernsey open-ended funds, which are not Exempt Funds, the administrator, manager or custodian who intends to provide services to the fund must comply with *The Licensees (Conduct of Business and Notification) (Non-Guernsey Schemes) Rules 1994*. This means that the Guernsey administrator, manager or custodian must give formal notice to the GFSC of their intention to provide services to the fund. The Guernsey administrator, manager or custodian cannot provide services to the fund until the GFSC has approved the arrangement.

Only one of the services of administration, management or custody may be provided in Guernsey to a non-Guernsey open-ended fund that is not an Exempt Fund, otherwise the GFSC will require the fund to be fully-authorised in Guernsey.

The notice to the GFSC must include:

- The prospectus for the fund;
- The agreement for the provision of the proposed administration, management or custody services to the fund;
- Confirmation that no other licensed entities in Guernsey provide, or intend to provide, services to the fund;



- Evidence of the regulatory approval of the fund given in the country where it is domiciled; and
- A cheque for the application fee of £1,000.

When considering whether to approve the arrangement, the GFSC will normally consider the following factors:

- The protection and enhancement of the reputation of Guernsey as a financial centre;
- The general nature and specific attributes of the fund;
- What economic benefit Guernsey is likely to derive from the business of the fund; and
- Whether the fund would have met the requirements to be authorised as a Guernsey domiciled fund (the GFSC normally will only approve an arrangement if the fund is likely to have been authorised pursuant to the funds regime in Guernsey).

The last requirement means that an assessment of the fund's promoter and/or manager is carried out and Forms PQ for each of the directors and key individuals involved in the fund must be submitted as part of the application to the GFSC.

It is possible to use Guernsey's fast track qualified investor fund ("QIF") regime to obtain the GFSC's approval within three days for a Guernsey administrator, manager or custodian to provide services to a non-Guernsey fund if it is equivalent to a Guernsey QIF, in that it is only available to qualified investors and it complies with the rules governing QIFs in Guernsey.

In order to make a fast track QIF application, the following documents must be submitted to the GFSC:

- Warranties that confirm that the Guernsey licensee has carried out sufficient due diligence to be satisfied that:

- o The promoter and associated parties of the fund are fit and proper;
- o That the fund has procedures in place to ensure restriction of the fund to only qualified investors; and
- o The economic rationale for the fund and any attendant risks are clearly disclosed;

- A certificate stating that the prospectus complies with all of the Guernsey rules relating to its contents;
- Signed or certified copies of the prospectus, the principal documents, and any other agreements material to the fund;
- Confirmation that no other licensed entities in Guernsey provide, or intend to provide, services to the fund;
- Evidence of the regulatory approval of the fund given in the country where it is domiciled; and
- A cheque for the application fee of £1,000.

Non-Guernsey closed-ended funds

Non-Guernsey closed-ended funds utilising a Guernsey service provider do not have a formal approval process in Guernsey. However, it is generally considered prudent for the service provider in Guernsey to notify the GFSC of their intention to provide services to a non-Guernsey closed-ended fund. Consequently, there are no fees payable to the GFSC in respect of a Guernsey administrator, manager or custodian providing services to a non-Guernsey closed-ended fund.

Conclusion

Guernsey's non-domiciled funds regime provides a flexible approach for fund promoters and Guernsey administrators, managers and custodians to provide services from Guernsey to funds regulated and domiciled in other jurisdictions.

Following the recent return to growth for the offshore funds sector, there are increasing opportunities for Guernsey based service providers to offer services to non-Guernsey funds and for promoters to benefit from the services offered from Guernsey for funds domiciled in other jurisdictions.

This Red Guide is only intended to give a brief summary and general overview of this area of law. It is not intended to be, nor does it constitute, legal advice and should not be relied upon as doing so. If you would like legal advice or more information in relation to the matters covered in this Red Guide or generally in relation to a corporate issue, please contact our corporate team on +44 (0)1481 723723, or by email at corporate@aohall.com. Members of our corporate team, together with their contact details, are listed on our website at www.aohall.com.

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ⁱ GFSC Quarterly Statistical Review 30 June 2011

ⁱⁱ Irish Funds Industry Association Statistics Fact Sheet July 2011

