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UPDATE

The Guernsey Private Investment Fund

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The Guernsey Financial Services Commission (the **GFSC**) unveiled its Private Investment Fund regime (**PIF**) in December 2016, and it has since become a popular choice amongst promoters. The GFSC considers a private fund to be one where there is a close relationship between investors and management, and the regime is helpful for promoters aiming to launch closely held open or closed-ended funds, as it offers a fast and efficient route to launch.

The key features of the PIF regime are:

- **Registration**: must be a 'collective investment scheme' under the Protection of Investors (Bailiwick of Guernsey) Law 1987 (the **POI Law**) and be registered with the GFSC under the POI Law.
- **Flexibility of form**: can take a variety of legal forms, including a company, unit trust, limited partnership or other vehicle or entity approved by the GFSC. Where a PIF is structured as a protected cell company or an incorporated cell company, there cannot be separate investment advisers acting in relation to individual cells.
- **Fast-track**: one business day turnaround by the GFSC to approve both application for a licence for the manager and registration of the PIF.
- **Offer document**: no regulatory requirement to prepare information particulars and no particular disclosure requirements. Notwithstanding this, promotors may wish to prepare a document detailing the salient terms of the underlying investments to be made with investors' money, which also contains appropriate disclaimers and risk warnings.
- **Custody**: no requirement for a custodian to be appointed if the PIF is closed-ended, and where a custodian is required the GFSC will consider the appointment of a custodian domiciled outside Guernsey.
- **Investors**: no restriction on the number of potential investors to which the PIF may be promoted (unlike equivalent regimes in other jurisdictions) – the only restriction is that no more than 50 investors (legal or natural persons) actually subscribe for securities with an ultimate economic interest in the PIF. The GFSC applies a look-through approach when determining the number of investors subscribed, but a key feature of the PIF is that an investment manager acting as agent for a wider group of stakeholders would be considered as one investor. Following the initial year from the date of first subscription, the PIF may take on 30 additional investors per year, up to a cap of 50 investors.

The GFSC has implemented the following regulatory protections that form part of the PIF regime:

- a Guernsey domiciled and licensed administrator must administer the PIF. This can be outsourced, but ultimately the Guernsey administrator remains responsible for administration;
- a Guernsey domiciled and licensed manager must be responsible for management of the PIF;
- the manager of the PIF provides, among others, an affirmation to the GFSC in which it affirms that it has made careful and appropriate enquiries such that, as far as the manager has been reasonably able to ascertain, the investors are able to sustain any losses incurred on their investment in the PIF at the time they make the investment. The affirmation can be satisfied in a number of ways, and the GFSC has

provided in its published FAQ some examples of the degree of due diligence that may be sufficient to enable the manager to do so;

- if information particulars are prepared, the manager will ultimately be responsible for them;
- rules governing conflicts of interest;
- the PIF must be audited by a qualified auditor; and
- the PIF must provide quarterly statistical updates to the GFSC.

If you require further information regarding the PIF regime please contact:

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