

Does Guernsey need unregulated funds?

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Ever since Jersey announced last autumn that it was establishing two new categories of unregulated funds, with minimum investment of USD1m or traded on a recognised exchange, that would not have to undergo initial or ongoing supervision by the Jersey Financial Services Commission, use a service provider based on the island or obtain an audit sign-off, other jurisdictions have been questioning whether they need similar vehicles in order to maintain a competitive edge.

In Guernsey some industry professionals believe that the idea should be examined as a potential addition to the island's armoury of fund options. But other say unregulated funds would offer little that existing regimes do not provide already, that there does not appear to be demand from investors for the advantages they offer, or that introducing them would undermine the jurisdiction's reputation among investors for sound regulation provided by the Guernsey Financial Services Commission.

Ian Burns of Anson Group is one of those who are in two minds. 'The regime we have at the moment looks pretty good,' he says. 'I don't think the turnaround time at the commission causes any of our fund launches to be delayed, and from our perspective I don't see demand for unregulated funds.'

'With the Registered Funds regime by Guernsey introduced last year, there is a 72-hour turnaround time within the commission which is working very well. However, I still need to collect the same amount of know-your-customer and due diligence information as in the past. The difference is that it is now stored in a file that is available should the commission ever want to see it, instead of being sent routinely to the regulator.'

'While the process has shortened at the commission, the process of collecting information on the fund, on investments, on directors and on the manager remains. I'm happy about this, because clearly we have a responsibility to ensure we have completed due diligence on our clients. In some ways I'm attracted to an unregulated funds regime, but I don't know how much time it would save because I would still have to collect all that information.'

Darren Bacon of Mourant du Feu & Jeune argues that Guernsey should look carefully at the concept of unregulated funds. 'You could say that the unregulated fund is a response to Guernsey's Registered Funds regime, which is not unregulated as such but is clearly less heavily regulated than many other structures.'

'The regulator will look closely at it, but at the moment we seem to have the products to satisfy customer demand. The Registered Funds regime was brought in specifically to satisfy customer demand for a lighter regulatory touch and faster turnaround. If clients demand another structure, I'm sure we will look at it, but I don't think there's demand for that yet.'

Close Fund Services executive chairman Stuart Dyer believes unregulated funds are an avenue the island might consider, but he is wary of the impact on its reputation. 'Guernsey has put more emphasis on regulated service providers for certain types of fund, for which they carry out due diligence and provide the sign-off for the scheme,' he says. 'There may be some further move in that direction, but in my view Guernsey should be very aware that it has an excellent reputation, and you can go only so far without potentially tarnishing it.'

Connie Helyar of Ipes argues that Jersey's unregulated funds regime offers little that is not already available in Guernsey. She says: 'Both islands are really offering the same thing, they just call it slightly different things. We're offering effectively an unregulated regime, although we still license the general partners. They are both much of a muchness.'

KPMG's Rob Hutchinson notes: 'One of the reasons Guernsey has been successful is its light-touch

regulatory regime, but institutional private equity investors want to know that the vehicle itself is properly regulated at a proportionate level. In my view unregulated goes a bit too far and Guernsey doesn't need to do that. Most of my clients seem happy with the current regulatory regime, which doesn't stop them doing anything they want to.'

Iain Stokes of Mourant International Finance Administration acknowledges that the development of new fund regimes in recent years has been driven to some extent by jurisdictional arbitrage. 'The introduction of the Qualifying Investor Funds and Registered Funds regimes in Guernsey over the past 18 months has given us a lot more flexibility to launch products for the sophisticated investor,' he says.

'These allow the regulator to retain an effective oversight role in a strongly regulated environment while providers can attract the sophisticated end of the market. At some stage the jurisdictional arbitrage has to stop, because eventually you come to the point of the lowest common denominator. However, I believe Guernsey has been successful in moving to a principles-based regulatory environment that recognises the risk attaching to certain kinds of strategy.'

Bacon questions whether unregulated funds will in fact win extra business. 'The unregulated fund regime is largely trying to target Cayman's dominance of the market for hedge funds, which want a very quick turnaround and are happy to operate in an unregulated environment,' he says. 'I don't think the private equity market is looking for that, and if it were, it would be domiciled in Cayman rather than the Channel Islands.'

Peter Niven, chief executive of promotional agency GuernseyFinance, is unequivocal in his conviction that the island should not go down the unregulated route. 'It's quite interesting that last year, when we brought out our Registered Funds regime for closed-ended funds, some people in Jersey accused us of starting a race to the bottom,' he says. 'Well, I can quite honestly say they have won that race. We're not planning to replicate that in any way.'

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