

# **THE REGISTERED COLLECTIVE INVESTMENT SCHEME RULES and GUIDANCE, 2021**

The Registered Collective Investment Scheme Rules, made in accordance with the Protection of Investors (Bailiwick of Guernsey) Law, 2020<sup>1</sup> (“the Law”), are set out in this document.

Further guidance, provided by the Guernsey Financial Services Commission (“the Commission”), can be found in shaded boxes.

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<sup>1</sup> Order In Council No. XVIII of 2020.

## Contents

PART 1 INTRODUCTION .....	4
1.1 Application.....	4
PART 2 ADMINISTRATION, CUSTODY, AND AUDIT .....	6
2.1 Administration of the scheme .....	6
2.2 Custody of the scheme property .....	7
2.3 General provisions applicable to the designated administrator and designated custodian, or designated trustee, of a registered open-ended investment scheme and designated administrator of a registered closed-ended investment scheme .....	7
2.4 Appointment of a qualified auditor .....	8
PART 3 CONFLICTS OF INTEREST .....	9
3.1 Conflicts of interest .....	9
PART 4 INFORMATION PARTICULARS.....	11
4.1 Preparation of information particulars .....	11
4.2 Statements to be included in the information particulars .....	11
4.3 False or misleading information particulars .....	11
PART 5 NOTIFICATIONS .....	12
5.1 Immediate notifications.....	12
5.2 Annual notifications .....	12
5.3 Annual reports and financial statements.....	13
5.4 Quarter-end statistical information .....	13
PART 6 REGISTRATION OF OPEN-ENDED OR CLOSED-ENDED INVESTMENT SCHEMES .....	14
6.1 Application for registration of an open-ended investment scheme or a closed-ended investment scheme.....	14
6.2 Registration declarations.....	14
6.3 Proposal to add additional classes, sub-funds, or cells to a registered open-ended investment scheme.....	15
6.4 Undertakings .....	16
PART 7 GENERAL PROVISION.....	17
7.1 Interpretation.....	17
PART 8 SAVINGS, REVOCATIONS, CITATION AND COMMENCEMENT .....	20
8.1 Savings.....	20
8.2 Revocations .....	20

8.3 Citation and commencement.....	21
SCHEDULE 1.....	22

## PART 1 INTRODUCTION

### 1.1 Application

- (1) The Registered Collective Investment Scheme Rules 2021 replace The Registered Collective Investment Scheme Rules 2018<sup>2</sup>.
- (2) Unless specifically agreed otherwise by the Commission, these Rules apply to –
  - (a) registered open-ended investment schemes; and
  - (b) registered closed-ended investment schemes.
- (3) These Rules apply in the case of an umbrella fund as if each reference to a registered investment scheme were a reference to each constituent part within the umbrella fund, but subject to any modification set out in any particular rule.
- (4) The Commission may in its absolute discretion, by written notice, exclude or modify the application of any provision of these Rules.
- (5) The Commission may issue supplementary guidance regarding the standards of conduct and practice expected in relation to any aspect of the regulatory framework. Such guidance will not constitute rules of the Commission.

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<sup>2</sup> G.S.I. No. 32 of 2018.

**Guidance Note:** This document takes a two-level approach –

- the Rules set out the standards to be met; and
- guidance notes present suggested ways of showing compliance with the Rules.

Licensees may adopt alternative measures to those set out in the guidance so long as it is possible to demonstrate that such measures achieve compliance.

The text contained in shaded boxes contains guidance from the Commission and does not form part of the Rules.

## PART 2 ADMINISTRATION, CUSTODY, AND AUDIT

### 2.1 Administration of the scheme

- (1) It is the duty of the designated administrator of a registered investment scheme to administer the scheme in accordance with –
  - (a) the principal documents;
  - (b) these Rules;
  - (c) the most recently published information particulars; and
  - (d) in the case of a company scheme, any proper directions given by the directors, and in the case of a limited partnership scheme, any direction given by the general partner, or by the trustee, or manager of a unit trust scheme.
- (2) In the case of a company it is the duty of the directors not to give any directions, or exercise any powers, duties, or discretions which cause the company to operate otherwise than in accordance with the principal documents and information particulars or these Rules.
- (3) Subject to any restrictions in the principal documents the designated administrator may, at its discretion, and in the case of a company subject to any directions given by the directors, delegate any function to any person provided that the designated administrator is satisfied at the outset, and continues to remain satisfied, that the delegate is competent to undertake the function in question.

#### **Guidance Note:**

Any such arrangement should be undertaken in accordance with the Commission's Guidance on Outsourcing of Functions by Entities licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 2020.

## 2.2 Custody of the scheme property

- (1) The designated custodian, or designated trustee, of a registered open-ended investment scheme must take into its custody, or under its control, all the scheme property and hold it in trust in accordance with the information particulars.
- (2) It is the duty of the designated custodian, or the designated trustee, of a registered open-ended investment scheme to take reasonable care to ensure that the scheme property is administered, by the designated administrator, in accordance with the information particulars.
- (3) Full details of the custodian, or the trustee, must be disclosed to the Commission upon application for registration of the scheme. In the absence of a custodian, the Commission must be advised of the relevant provisions that will apply in respect of the safe keeping of the scheme property.

### **Guidance Note:**

Upon full disclosure of the provisions that are in place to ensure the assets of the scheme are adequately safeguarded, the Commission will give consideration to the appointment of a custodian, or trustee, that is not domiciled in the Bailiwick for a registered closed-ended investment scheme.

The designated administrator of a registered closed-ended investment scheme may provide safekeeping facilities to the investment scheme.

## 2.3 **General provisions applicable to the designated administrator and designated custodian, or designated trustee, of a registered open-ended investment scheme and designated administrator of a registered closed-ended investment scheme**

- (1) Every scheme must have a designated administrator and, in the case of an open-ended scheme, a designated custodian or designated trustee.

- (2) The duties of the designated administrator and designated custodian, or designated trustee, and, if applicable, in the case of a company the directors, and in the case of a limited partnership the general partner, and in the case of a unit trust the trustee, imposed on them by these Rules, and by the principal documents and the information particulars, are in addition to, and not in derogation from, the duties which are otherwise imposed on them by applicable law.
- (3) The designated administrator and the designated custodian, or the designated trustee, of a registered open-ended investment scheme must –
  - (a) be different persons and act independently of each other;
  - (b) each be incorporated, operate, and have a place of business in the Bailiwick;
  - (c) each be licensed under the Law;
  - (d) not be a subsidiary of the other; and
  - (e) not have executive directors or other officers in common.
- (4) In the case of a registered investment scheme that is a company, the designated custodian must not have executive directors or other officers in common with those of the registered investment scheme.

#### **2.4 Appointment of a qualified auditor**

- (1) A registered investment scheme must appoint a qualified auditor.



## PART 3 CONFLICTS OF INTEREST

### 3.1 Conflicts of interest

- (1) The directors, the general partner, and the trustee, as applicable, must each take all reasonable steps to ensure that there is no breach of any of the following requirements of this rule by any “relevant person”, meaning –
  - (a) the designated administrator;
  - (b) in the case of a unit trust, the trustee;
  - (c) any investment adviser;
  - (d) any manager;
  - (e) in the case of a company –
    - (i) the company; or
    - (ii) a director of the company;
  - (f) directors or partners of the general partner;
  - (g) the custodian; and
  - (h) any associate of any person described above.
- (2) Cash forming part of the scheme property may be placed in any current, deposit, or loan account with a relevant person if the arm’s length requirement is satisfied.
- (3) A relevant person may lend money to the registered investment scheme if the arm’s length requirement is satisfied. Loans that form part of an investor’s commitments do not fall into this category.

- (4) A relevant person may not sell, or deal in the sale of, property to the registered investment scheme unless the arm's length requirement is satisfied and, for the purpose of this section, a sale includes any lease or other transaction under which scheme property is made available by the registered investment scheme.
- (5) A relevant person may not purchase scheme property from a registered investment scheme unless the arm's length requirement is satisfied and, for the purposes of this section, a purchase includes any lease or other transaction under which the scheme property of the registered investment scheme is made available to the relevant person by the trustee or custodian.
- (6) A relevant person may not vest property in the registered investment scheme against the issue of shares, unless –
  - (a) the arm's length requirement is satisfied; or
  - (b) it is vested for the purposes of arrangements whereby the whole or part of such property becomes the initial scheme property of the registered investment scheme.
- (7) A relevant person may not enter into stock lending transactions, in relation to the registered investment scheme, unless the arm's length requirement is satisfied.
- (8) A relevant person may not provide services for the registered investment scheme unless the services are provided on terms which satisfy the arm's length requirement.
- (9) The arm's length requirement is that arrangements between the relevant person and the registered investment scheme are at least as favourable to the registered investment scheme as would be any comparable arrangement effected on normal commercial terms negotiated at arm's length between the relevant person and an independent party.
- (10) Sections (2) to (7) are subject to any provision in the principal documents or the information particulars forbidding the taking of advantage of all or any of them.

## PART 4 INFORMATION PARTICULARS

### 4.1 Preparation of information particulars

- (1) In connection with the launch of a registered investment scheme, the directors in the case of a company, the general partner in the case of a limited partnership, or the manager or trustee in the case of a unit trust, must prepare the information particulars which must at least contain the matters set out in the Prospectus Rules 2021.
- (2) The designated administrator of a registered investment scheme, as far as it is reasonably able, must monitor compliance with this Part.
- (3) In the case of a registered open-ended investment scheme, which is open for new subscriptions, information particulars must be reviewed at least once in every twelve months.
- (4) Changes in content of the information particulars, in any registered investment scheme, must be disclosed in accordance with the Prospectus Rules 2021.

### 4.2 Statements to be included in the information particulars

- (1) The information particulars must include the statement set out at Schedule 1, or words which have equivalent effect.

### 4.3 False or misleading information particulars

- (1) The directors, the general partner, or trustee, of a registered investment scheme are responsible for the information particulars and must take all reasonable steps to ensure that they do not contain any false or misleading statements, or omit facts which would make misleading any statement, in the information particulars.

## PART 5 NOTIFICATIONS

### 5.1 Immediate notifications

- (1) The designated administrator of a registered investment scheme must give immediate written notice, to the Commission, of –
  - (a) any proposed change of –
    - (i) designated administrator; or
    - (ii) designated custodian, or designated trustee, in the case of a registered open-ended investment scheme,and the appointment will only be effective following confirmation of the designation from the Commission;
  - (b) any proposal to reconstruct, amalgamate, terminate prematurely, wind-up, or extend the life of the registered investment scheme.
- (2) The designated administrator of a registered closed-ended investment scheme must give immediate written notice, to the Commission, of the addition of classes, sub-funds, or cells, to a registered closed-ended investment scheme.

### 5.2 Annual notifications

- (1) A designated administrator of a registered investment scheme must notify the Commission, in writing each year, of any change in respect of the information contained in the application form submitted for registration as a registered investment scheme or, in the absence of any change, notify the Commission of no change.

- (2) Notification must be submitted to the Commission via the online Submissions Portal in accordance with the registered investment scheme's online timeline.

### **5.3 Annual reports and financial statements**

- (1) The designated administrator of a registered investment scheme must submit, to the Commission, copies of the audited annual report and accounts for the scheme, in line with the information particulars and no later than six months following the end of the annual accounting period; via the Commission's online Submissions Portal. When the audited annual report and accounts are sent to the Commission any principal documents, or other agreements, which have been amended and not previously submitted, must be submitted.

### **5.4 Quarter-end statistical information**

- (1) The designated administrator of a registered investment scheme must submit, to the Commission, a statistical return, relevant to the scheme, for each quarter, via the Commission's online Submissions Portal. The information to be contained in such statistical return is as required by the Commission and must be within the Commission's agreed timeframes.

## **PART 6 REGISTRATION OF OPEN-ENDED OR CLOSED-ENDED INVESTMENT SCHEMES**

### **6.1 Application for registration of an open-ended investment scheme or a closed-ended investment scheme**

- (1) The designated administrator of an open-ended investment scheme, or a closed-ended investment scheme, seeking a declaration of registration from the Commission must submit –
  - (a) the appropriate application form;
  - (b) final versions of the principal documents, information particulars, and other agreements material to the scheme;
  - (c) the application fee; and
  - (d) any other information as required by the Commission.
  
- (2) Applications must clearly indicate the identity of –
  - (a) the proposed designated administrator; and
  - (b) in the case of an open-ended investment scheme, the proposed designated custodian or the proposed designated trustee.

### **6.2 Registration declarations**

- (1) The Commission may make a declaration of registration to an open-ended investment scheme or a closed-ended investment scheme if it is satisfied that –
  - (a) the scheme's principal documents and information particulars comply with the Prospectus Rules 2021; or

- (b) that it is unnecessary, in the interests of investors, for the scheme's principal documents and information particulars to comply with any part of the Prospectus Rules 2021 with which they do not comply.
- (2) A registered investment scheme declaration must, in relevant cases, specify the rules with which the registered investment scheme's principal documents and information particulars do not comply.

**Guidance Note:**

Where a Registered Collective Investment Scheme declaration of registration is issued the Commission will, at the same time, confirm the designation of the administrator and, in the case of an open-ended scheme, the designation of the custodian or trustee.

**6.3 Proposal to add additional classes, sub-funds, or cells to a registered open-ended investment scheme**

- (1) The designated administrator of a registered open-ended investment scheme must give prior written notice, to the Commission, of any proposal to add additional classes, sub-funds, or cells to a registered open-ended investment scheme together with –
- (a) final versions of any amended or additional information particulars, principal documents, or other agreements material to the addition of the class, sub-fund, or cell;
  - (b) the application fee;
  - (c) such other information as the Commission may require.
- (2) Any proposal made to the Commission will not have effect until –
- (a) the Commission has given its approval to the proposal; or
  - (b) one month has elapsed since the notice was given without the Commission having notified the person serving the notice that the proposal is not approved.

#### **6.4 Undertakings**

- (1) As a condition of the registration of a scheme, the Commission is entitled to require such undertakings, indemnities, bonds, guarantees, and assurances as the Commission may determine to secure compliance with these Rules.



## PART 7 GENERAL PROVISION

### 7.1 Interpretation

- (1) In these Rules terms have their ordinary meaning unless specifically defined in the Law or in these Rules.
- (2) In these Rules the following definitions should be followed -

**“administration agreement”** means an agreement under which a person is appointed designated administrator of a registered investment scheme, to discharge the duties of the scheme;

**“annual accounting period”** is the period, normally of twelve months, as specified by the governing law, or specified in the information particulars, or principal documents;

**“custodian agreement”** means an agreement under which a body corporate is appointed to hold the property of a collective investment scheme (other than a unit trust) and to discharge the duties imposed by these Rules on the designated custodian (if appointed);

**“holder”**, in relation to a share in a registered investment scheme, means the person who is entered in the register as the holder of the share, or unit, or limited partnership interest, or the first named holder in the case of joint holders;

**“information particulars”** means particulars of a registered investment scheme prepared in accordance with these Rules and includes a prospectus, scheme particulars, offering memorandum, explanatory memorandum, term sheet, application form, subscription agreement, admission document, listing particulars, or any other similar documents or any combination of;

**“investment adviser”** means a person who, under a commercial arrangement not being a mere contract of employment, provides the manager or the board of directors, the general partner of a limited partnership, or the manager or trustee of a unit trust, of a registered investment scheme with advice as to the merits of investment opportunities available to such registered investment scheme whether or not he regularly exercises a discretionary power over investments for the account of that scheme;

**“manager”** means the person appointed manager of a registered investment scheme, including the general partner (appointed under a partnership

agreement), the manager of a unit trust (appointed under a trust instrument), or appointed by the trustee (under a management agreement), to discharge the duties under a management agreement;

**“management agreement”** means an agreement under which a person is appointed manager of a registered investment scheme to discharge the duties;

**“partnership agreement”** means an agreement in writing of the partners as to the affairs of a limited partnership and the conduct of its business;

**“principal documents”** means, in relation to –

- (a) a unit trust; the trust instrument and the management agreement, where applicable;
- (b) a company; the articles of incorporation of a Guernsey company (or an equivalent document under the applicable law of a non-Guernsey body corporate), the administration agreement and the custodian agreement, where applicable;
- (c) a partnership; the partnership agreement, the partnership administration agreement, the partnership management agreement, and the custodian agreement, where applicable; and
- (d) a registered investment scheme other than a unit trust, or a company, or a limited partnership; the documents dealing collectively with the same or similar obligations and duties as the principal documents constituting a unit trust, a company, or a limited partnership, and administration agreement and custodian agreement, where applicable;

**“qualified auditor”** means a person who has a place of business in the Bailiwick of Guernsey and who holds a current practising certificate issued by –

- (a) The Institute of Chartered Accountants in England and Wales; or
- (b) The Institute of Chartered Accountants of Scotland; or
- (c) The Institute of Chartered Accountants in Ireland; or
- (d) The Association of Chartered Certified Accountants; or
- (e) a body outside the United Kingdom undertaking a similar regulatory role and having equivalent professional standards for membership as the bodies specified above;

**“share”** means a share, limited partnership interest, or unit, or similar interest, in a registered investment scheme;

**“trust instrument”** means a written instrument, whether or not under seal, made by the trustee, or made between the manager and the trustee, constituting the unit trust and includes supplemental instruments;

**“trustee”**, in relation to a registered investment scheme that is a unit trust, means the trustee of the unit trust;

**“umbrella fund”** means a registered investment scheme which provides that the contributions of investors, and the profits or income out of which payments are to be made to them, are pooled in separate parts of the property and whether or not investors in each separate part may exchange rights in one part for rights in another;

**“unit trust”** means a registered investment scheme (other than a limited partnership) under which the property of the scheme is held in trust for the investors.

## PART 8 SAVINGS, REVOCATIONS, CITATION AND COMMENCEMENT

### 8.1 Savings

- (1) Registrations issued under The Protection of Investors (Bailiwick of Guernsey) Law, 1987, and previously governed by the Registered Collective Investment Scheme Rules 2018, are recognised as valid for the purposes of these Rules.
- (2) Any exclusion or modification granted by the Commission in relation to a registered investment scheme pursuant to either –
  - (a) rule 7.04 of the Registered Collective Investment Scheme Rules 2008;
  - (b) rule 7.04 of the Registered Collective Investment Schemes Rules 2015; or
  - (c) rule 7.04 of the Registered Collective Investment Scheme Rules 2018,will continue to apply under these Rules, where the Law and these Rules provide scope for such exclusions or modifications.
- (3) Any other exclusions or modifications granted by the Commission, under the Registered Collective Investment Scheme Rules 2018, will continue to apply where the Law and these Rules provide scope for such exclusions and modifications.

### 8.2 Revocations

- 8.2.1 Revocation of the Registered Collective Investment Scheme Rules 2018.

- (1) The Registered Collective Investment Scheme Rules 2018 are revoked save that the 2018 Rules will continue to apply to any outstanding obligations of any person.

### **8.3 Citation and commencement**

- (1) These rules may be cited as the Registered CIS Rules 2021.
- (2) These rules come into force on 1<sup>st</sup> November 2021.

## SCHEDULE 1

Statement to be included in the information particulars –

“The Company is a registered closed- [open-] ended investment scheme registered pursuant to the Protection of Investors (Bailiwick of Guernsey) Law, 2020, and the Registered Collective Investment Scheme Rules 2021, issued by the Guernsey Financial Services Commission (the “Commission”). The Commission, in granting registration, has not reviewed this document but has relied on specific declarations provided by [insert here name of the designated administrator], the Company’s designated administrator.

The Commission takes no responsibility for the financial soundness of the [Scheme] or for the correctness of any of the statements made or opinions expressed with regard to it.”