

GUERNSEY STATUTORY INSTRUMENT

ENTITLED

The Investor Protection (Designated Countries and Territories) Regulations, 1989 *

[CONSOLIDATED TEXT]

NOTE

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* G.S.I. No. 30 of 1989; as amended by the Financial Services Commission (Fees) Regulations, 1990 (G.S.I. No. 18 of 1990); the Investor Protection (Designated Countries and Territories) (Republic of Ireland) Regulations, 1992 (G.S.I. No. 18 of 1990); the Investor Protection (Designated Countries and Territories) (Amendment) (AIFMD) Regulations, 2015 (G.S.I. No. 31 of 1992). See also the Investor Protection (Designated Countries and Territories) (Amendment) (AIFMD) Regulations, 2015 (*supra*).

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ARRANGEMENT OF REGULATIONS

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Explanatory Note.

(Made on 29th September, 1989.)

The Investor Protection (Designated Countries and Territories) Regulations, 1989

THE STATES ADVISORY AND FINANCE COMMITTEE, having regard to the Protection of Investors (Bailiwick of Guernsey) Law, 1987^a ("**the Law**") and in particular to sections 1, 7 and 29 of, and Schedules 2 and 3 to, the Law;

having regard to the recommendations of the Guernsey Financial Services Commission;

whereas, in the opinion of the Committee, the laws of:

- (i) the United Kingdom of Great Britain and Northern Ireland;
- (ii) the Bailiwick of Jersey;
- (iii) the Isle of Man;

afford adequate protection to investors in relation to the restricted activities respectively specified in Schedule 1 to these Regulations in respect of each of those countries and territories, and in relation to the classes or descriptions of collective investment schemes respectively specified in Schedule 2 to these Regulations in respect of each of those Countries or territories;

whereas any notice given to the Commission under section 29(1)(c)(iv) of the Law should be required to identify by name each collective investment scheme to which it

^a Order in Council No. XX of 1987; No. XIX of 1987; Ordinance No. XVII of 1988.

relates;

whereas a fee equivalent to that payable by an applicant for a licence should in general be payable in respect of each collective investment scheme identified in such a notice;

whereas, however, on the basis of reciprocal treatment afforded in this respect to Guernsey collective investment schemes in the Bailiwick of Jersey, it is possible to dispense with the payment of a fee when such a notice is given in respect of a collective investment scheme whose promotion is authorised in or from within, and under the law of, that Bailiwick;

in exercise of the powers conferred on it by sections 3(1)(g), 14(2)(a), 21, 22, and 29 of the Law,

HEREBY MAKES THE FOLLOWING REGULATIONS: –

Designated countries and territories - restricted activities.

1. Each of the countries and territories specified in column (1) of Schedule 1 to these Regulations is hereby designated for the purpose of section 29(1)(c) of the Law as a country or territory whose law, in the opinion of the Committee, affords adequate protection to investors in relation to the activities specified opposite its name in column (2) of that Schedule.

Designated countries and territories - collective investment schemes.

2. Each of the countries and territories specified in column (1) of Schedule 2 to these Regulations is hereby designated for the purpose of section 29(2) of the Law as a country or territory whose law, in the opinion of the Committee, affords adequate protection to investors in relation to the classes or descriptions of collective investment schemes specified opposite its name in column (2) of that Schedule.

Notices under section 29(1)(1)(c)(iv) of the Law.

3. (1) It is hereby declared for the avoidance of doubt that a notice given to the Commission under section 29(1)(c)(iv) of the Law by a person intending to carry on the restricted activity of promotion in connection with a collective investment scheme in or from within the Bailiwick under any exemption conferred under that section must –

- (a) identify the designated country or territory concerned,
- (b) state the name of each collective investment scheme which he intends to promote in or from within the Bailiwick of Guernsey and the manner in which he intends to promote each such scheme,
- (c) certify that he is permitted to promote each such scheme in that manner in the designated country or territory concerned.

(2) ...

NOTE

In regulation 3, paragraph (2) was revoked by the Financial Services Commission (Fees) Regulations, 1990, regulation 8, with effect from 1st January, 1991.

Interpretation.

4. (1) In these regulations –

- [(aa) **"EU Alternative Investment Fund Managers Directive"** means Directive 2011/61/EU of the

European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, as from time to time amended, re-enacted (with or without modification), extended or applied,]

- (a) **"the Law"** means the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
- (b) words and expressions used in the Law have the same meanings as they have in the Law,
- (c) a reference to any enactment (wherever made) is to that enactment as from time to time amended, repealed and replaced, extended or applied by or under any other enactment.

(2) The Interpretation (Guernsey) Law, 1948^c applies throughout the Bailiwick to the interpretation of these regulations.

NOTES

In regulation 4, paragraph (1)(aa) was inserted by the Investor Protection (Designated Countries and Territories) (Amendment) (AIFMD) Regulations, 2015, regulation 2, with effect from 3rd August, 2015.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

^c Ordres en Conseil Vol. XIII , p. 355.

Citation.

5. These Regulations may be cited as the Investor Protection (Designated Countries and Territories) Regulations, 1989.

NOTE

In accordance with the provisions of the Investor Protection (Designated Countries and Territories) (Amendment) (AIFMD) Regulations, 2015, regulation 8, with effect from 3rd August, 2015, these Regulations may, when cited together with the Investor Protection (Designated Countries and Territories) (Republic of Ireland) Regulations, 1992 and the Investor 2015 Regulations, be cited as the Investor Protection (Designated Countries and Territories) Regulations 1989, 1992 and 2015.

Commencement.

6. These Regulations shall come into force on 1st November 1989.

SCHEDULE 1

Section 1

Designated countries and territories - restricted activities

| (1) Country or territory | (2) Restricted activities |
|--|--|
| The United Kingdom of Great Britain and Northern Ireland | Promotion carried on in connection with an authorised unit trust scheme within the meaning of the United Kingdom's Financial Services Act 1986. |
| The Bailiwick of Jersey | Promotion carried on in connection with a Collective Investment Fund within the meaning of the Collective Investment Funds (Jersey) Law, 1988 and in respect of which a functionary holds a permit granted under that Law. |
| The Isle of Man | Promotion carried on in connection with an authorised scheme within the meaning of the Financial Supervision Act 1988 (an Act of Tynwald). |
| [The Republic of Ireland | Promotion carried on in connection with an authorized scheme within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 ^{ca} .] |
| [Any country designated in Schedule 3 | Promotion carried on in connection with an AIF within the meaning of the EU Alternative Investment Fund Managers Directive.] |

NOTES

In Schedule 1,

^{ca} Republic of Ireland Statutory Instrument No. 78 of 1989.

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the entries in the first pair of square brackets relating to the Republic of Ireland in the first and second columns were inserted by the Investor Protection (Designated Countries and Territories) (Republic of Ireland) Regulations, 1992, regulation 1(a), with effect from 11th January, 1993;

the entries in the second pair of square brackets in the first and second columns were inserted by the Investor Protection (Designated Countries and Territories) (Amendment) (AIFMD) Regulations, 2015, regulation 3, with effect from 3rd August, 2015.

Designated countries and territories - collective investment schemes

| (1) Country or territory | (2) Collective investment Schemes |
|--|--|
| The United Kingdom of Great Britain and Northern Ireland | Any authorised unit trust scheme within the meaning of the United Kingdom's Financial Services Act 1986. |
| The Bailiwick of Jersey | Any collective investment fund within the meaning of the Collective Investment Funds (Jersey) Law, 1988 in respect of which a functionary holds a permit granted under that Law. |
| The Isle of Man | Any authorised scheme within the meaning of the Financial Supervision Act 1988 (an Act of Tynwald). |
| [The Republic of Ireland | Any authorized scheme within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 ^{cb} .] |
| [[Any country designated in Schedule 3 | An AIF within the meaning of the EU Alternative Investment Fund Managers Directive.] |

NOTES

In Schedule 2,

the entries in the first pair of square brackets relating to the Republic of Ireland in the first and second columns were inserted by the Investor Protection (Designated Countries and Territories) (Republic of Ireland) Regulations, 1992, regulation 1(b), with effect from 11th January, 1993;

^{cb} Republic of Ireland Statutory Instrument No. 78 of 1989.

the entries in the second pair of square brackets in the first and second columns were inserted by the Investor Protection (Designated Countries and Territories) (Amendment) (AIFMD) Regulations, 2015, regulation 4, with effect from 3rd August, 2015.

Countries designated in relation to AJFs within the meaning of the EU Alternative
Investment Fund Managers Directive

Austria
Belgium
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark
Estonia
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Latvia
Lithuania
Luxemburg
Malta
Netherlands
Portugal
Slovakia
Slovenia
Spain
Sweden
United Kingdom]

NOTE

Schedule 3 was inserted by the Investor Protection (Designated Countries and Territories) (Amendment) (AIFMD) Regulations, 2015, regulation 5, Schedule, with effect from 3rd August, 2015.

EXPLANATORY NOTE

*(This Note forms no part of the Regulations)***

The Protection of Investors (Bailiwick of Guernsey) Law, 1987 prohibits the carrying on of controlled investment business without a licence issued by the Financial Services Commission and provides that a licensee may carry on such business in connection with a collective investment scheme only if the scheme is authorised by the Commission. The effect of these Regulations, made in accordance with section 29 of the Law, is that:

- (a) a person who (or a body which) does not have a permanent place of business in the Bailiwick and is recognised by the law of the United Kingdom, the Bailiwick of Jersey or the Isle of Man as a national of that place, and promotes a collective investment scheme there in a manner in which that law permits him to do so, will be entitled to promote the Scheme in the Bailiwick without a licence once he has notified the Commission that he intends to do so and complied in other respects with section 3(1) of the Law (which relates to licence applications); and
- (b) a licensee will be free to carry on any restricted activity for which he has a licence in connection with any collective investment scheme authorised under the law of the United Kingdom or the Isle of Man or covered by a permit issued under the law of Jersey if he observes any requirements subject to which that activity may be carried on there.

** The text of this Explanatory Note is as it was when the Statutory Instrument was first made – that is to say that the Explanatory Note has not been updated to take account of any changes made by subsequent amending Statutory Instruments with their own Explanatory Notes.