

# Guernsey legal and regulatory update

An overview of Guernsey legislative and regulatory developments  
11 January 2020 to 30 March 2020

## 1 Economic substance and COVID-19

Current restrictions on travel and social distancing as a result of the Coronavirus crisis (**COVID-19**) pose challenges for companies which are in-scope of economic substance, in particular their ability to hold quorate board meetings in Guernsey and to demonstrate that their core income generating activities (**CIGA**) are in Guernsey.

The latest guidance issued by Guernsey's International Business Association (**GIBA**) provides timely clarification (the **Guidance**).

The Guidance states that, following discussions with Guernsey's Revenue Service, GIBA understands that the Revenue Service would take a similar pragmatic approach to the published statement of Jersey's Minister for Treasury & Resources that, where companies have had to adjust their operating practices to compensate for the coronavirus outbreak, the Jersey Revenue Service will not determine that they have failed the economic substance test. This treatment will only apply to adjustments to the normal operating practices, and to the extent they are required to mitigate the threats from the outbreak.

The Guidance advises companies in-scope of economic substance to 'maintain and retain relevant records that show what their policy was in respect of restrictions on travel for the company officers and the period of time for which that policy was in place'. It also acts as a reminder that a virtual meeting where there is a quorum of directors physically present in Guernsey, would already count towards demonstrating that board meetings are held in the Island.

The Guidance also suggests that companies consider the ability to appoint alternate directors on Island who can attend meetings in Guernsey and thereby address any short-term practical difficulties arising from COVID-19 (note that any such appointment may however require the prior approval of the Guernsey Financial Services Commission (the **GFSC**)) – see 2 below (**Appointment of alternate directors**).

View the Guidance [here](#).

## 2 Appointment of alternate directors

In view of the possible need to appoint alternate directors to Guernsey licensees at short notice, the GFSC advises any proposed alternate to complete and submit the Online Appointment as normal **and** to email the GFSC advising of the submission. If the proposed alternate is already known to the GFSC as a director of the licensee's designated manager (or insurance manager), the GFSC will expedite the application.

View the GFSC news [here](#).

## 3 Financial stability during COVID-19

The GFSC is closely monitoring the COVID-19 situation and increasing its financial stability work. The GFSC has announced that it is reducing the number of industry-facing work which do not relate to financial

stability or consumer welfare and it is postponing all routine supervisory visits in order to allow firms to focus on supporting their customers and staff.

Firms are expected to manage their financial and operational resilience including actively managing their liquidity, for example monitoring their financial resources requirement, and if firms have any concerns about their financial stability, to contact the GFSC as soon as they are aware. The GFSC emphasises that directors or partners of firms remain responsible for ensuring high ethical standards of behaviour during the coronavirus episode, as at any other time.

The GFSC also urges firms to make full use of the electronic options available in the financial crime handbook in relation to verification of customers.

View the GFSC's update [here](#).

#### **4 Directors' duties**

Directors of licensees are being specifically reminded by the GFSC of financial resources requirements, both capital and liquidity, as prescribed by the various rules and conditions of the GFSC.

Directors are expected to be acting appropriately before making decisions to issue dividends, upstream excess capital or liquidity, intercompany loans or any other decision that materially financially weakens the local business.

View the GFSC news [here](#).

#### **5 Financial returns**

The submission of audited financial returns with the GFSC has been postponed to the end of October 2020 (at the earliest). In the meantime, financial returns can be submitted in unaudited form, without special concession. The deadline for submission of unaudited returns has been extended by one month to the original deadline.

View the GFSC news, including the list of regulatory returns concerned, [here](#).

#### **6 Completion of transactions amidst COVID-19**

COVID-19 has had a significant impact on the global economy and created an unprecedented set of challenges globally. With containment measures, including quarantine and travel restrictions, increasingly prevalent, there is understandable concern about closing transactions during these disrupted times. For example, how to hold a board or shareholder meeting if individuals are unable to meet in person, how to execute documents, how to carry out due diligence. These concerns are largely practical and there are some simple measures which can be taken giving Guernsey companies the ability to mitigate any impact on their transactions and overcome barriers to closing them.

View our legal update on [Overcoming Barriers to Completion of Corporate Transactions amidst COVID-19 Challenges](#).

#### **7 Insolvency Reform**

The States of Guernsey has approved long-awaited amendments to Guernsey's companies law. These amendments are intended to improve and update Guernsey's corporate insolvency regime, by providing clarity around many of the processes to be adopted and giving statutory footing to the powers of insolvency officeholders to investigate and pursue misconduct of corporate officers. The changes, which are not yet in force, are consistent with Guernsey's alignment to general principles of UK corporate insolvency processes, while providing welcome flexibility and simplification.

View our Legal Update [here](#).

#### **8 Corporate tax return - Improved online services**

Guernsey's Revenue Service has introduced an online service for companies completing and submitting their corporate tax returns. The upgrade in service is intended to make the process of submitting tax information more streamlined, with an enhanced corporate tax return incorporating the new economic substance requirements.

## 9 Data Protection

Latest figures reveal that 28 personal data protection breaches were reported to the Office of the Data Protection Authority (ODPA) in the first two months of 2020. This is the lowest figure in a year and the majority of those breaches (19) were accidental being data sent to the wrong recipient. Further information is available [here](#).

In other news, the ODPA has issued a public reprimand to the States Policy & Resources Committee (P&R) and more recently, the Channel Islands Financial Ombudsman (CIFO), in each case for breach of the Data Protection (Bailiwick of Guernsey) Law, 2017. Further details are available [here](#) (P&R) and [here](#) (CIFO).

## 10 Standard & Poor – Guernsey Rating

Guernsey continues to be rated AA- (long-term sovereign credit rating) and A-1+ (short-term sovereign credit rating) by the rating agency, Standard & Poor. Guernsey's outlook has also improved from negative to stable as a result of greater stability in UK politics and greater clarity regarding the UK's exit from the European Union.

View the States of Guernsey media release [here](#).

## 11 National Risk Assessment

Guernsey has published its National Risk Assessment report (NRA) on money laundering and terrorist financing. The purpose of the NRA is to assist authorities to understand the level and nature of the risks faced by various business sectors within the Bailiwick as well as providing valuable information to businesses to ensure that they have appropriate measures in place to address risks.

The GFSC intends to run a series of interactive workshops to assist firms in developing their mitigation of the money laundering and terrorist financing risks to their businesses, as identified in the NRA. These workshops were planned for April however they have been postponed because of COVID-19.

View the NRA [here](#).

## 12 Q4 investment statistics

The net asset value of total funds under management and administration for the last quarter of 2019 decreased by £17.7 billion (-6.2%) to £268.3 billion. Over the past year, total net asset values decreased by £13.3 billion (-4.7%).

Within these totals, Guernsey domiciled open-ended funds decreased over the quarter by £1.9 billion (-3.9%) to £46.3 billion (representing an increase of £3.8 billion (9.0%) in the past year) and Guernsey closed-ended funds increased over the quarter by £1.1 billion (0.6%) to £181.3 billion (representing an increase of £4.9 billion (2.8%) in the past year).

View the full investment statistics for 2019 [here](#).

## 13 GFSC Enforcement

The GFSC has issued a public statement in relation to a local fiduciary and POI licensee, and its directors, for failing to ensure compliance with regulatory requirements and the minimum criteria for licensing under both the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 and the Protection of Investors (Bailiwick of Guernsey) Law, 1987.

View the GFSC's public statement [here](#).

## 14 Mandatory Disclosure Rules

The Income Tax (Approved International Agreements) (Implementation) (Mandatory Disclosure Rules) Regulations, 2020 (the **Regulations**) have been made to implement the OECD's (2018) Model Mandatory Disclosure Rules for CRS Avoidance Arrangements and Opaque Offshore Structures (**MDR**) into Guernsey's domestic law. This follows on from the States of Guernsey's commitment to introduce legislation for MDR by 31 December 2019, the timetable set for EU countries.

MDR is not endorsed as an international standard but is considered by the OECD as 'best practice' based on the Base Erosion and Profit Sharing Initiative (**BEPS**). It is intended to be a further preventative control to

address the concern that, notwithstanding implementation of the Common Reporting Standard (CRS) which has created greater transparency and cooperation between global tax administrations, arrangements and schemes still exist which seek to circumvent CRS reporting.

MDR and these Regulations focus on the use of CRS avoidance arrangements and opaque offshore structures as a means of avoiding the reporting obligations of the CRS by requiring intermediaries in respect of such arrangements or structures to disclose them to the Director of Guernsey's Revenue Service if they make the arrangement or structure available for implementation, or provide relevant services in respect of the arrangement or structure, through an office or branch located in Guernsey; or are resident or have their place of management in Guernsey; or if they are incorporated in, or established under the laws of, Guernsey.

The Regulations were made on 11 March 2020 but are not yet in force.

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