

Guernsey legal and regulatory update

An overview of Guernsey legislative and regulatory developments
1 April 2020 to 30 June 2020

1 New fast track regime for managers of overseas funds

The Guernsey Financial Services Commission (the **GFSC**) has launched a new fast track regime for managers of overseas funds looking to re-domicile in the Bailiwick. The intention is to simplify the licence application process by combining the consent to migrate the manager into the Bailiwick within a 10 day review period or, alternatively, the licensing of a newly incorporated Guernsey entity, again within 10 days.

View our Legal Update [here](#).

2 Revision of laws

Legislation amending a number of Guernsey's supervisory and regulatory laws has been published and, while a date is yet to be set, is expected to go before the States for approval in July (with a live date likely to be sometime in the following 12 months).

Guernsey's financial services industry is governed by laws that were implemented as and when the need arose. While each law has generally been effective in enabling supervision of the activities it covers (Investments/Banking/Fiduciary/Insurance), the differences within each of the laws in relation to supervisory practices and procedures have resulted in confusion and inconsistencies in approach. The key aim of the new legislation is to ensure that the Bailiwick's regulatory regime is consistent and in compliance with the relevant international standards.

View the legislation [here](#).

3 Cannabis Funds

The GFSC has clarified the classes of cannabis related investments it is prepared to consider in relation to applications for the authorisation or registration of collective investment schemes.

Essentially the GFSC will not consider applications where one of the investment classes involves the production, sale or marketing of recreational cannabis products.

View the GFSC announcement [here](#).

4 Beneficial Ownership framework

Various amendments are proposed to the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, including:

- to clarify, for consistency purposes, that the Registrar of Beneficial Ownership's (the **Registrar**) administrative enforcement powers do **not** apply to businesses licensed by the GFSC
- to introduce a requirement that the Registrar considers specific factors before imposing a disqualification order, ie the seriousness of the failure, whether it was inadvertent, and the potential financial consequences of imposing the penalty (which are in line with the factors currently applicable to imposing a financial penalty or making a public statement)

- to specify the particulars that must be recorded in respect of corporate beneficial owners
- to clarify that the Registrar's powers to enforce compliance with the requirements relevant to beneficial ownership extend to the requirements relating to nominee relationships
- to widen the Registrar's information gathering powers to include matters relating to risk and to extend the application of those powers to third parties such as liquidators of a legal person
- to permit the Director of the Revenue Service to inspect the beneficial ownership register.

Refer to our Legal Update [here](#).

5 Updates to the AML Handbook

Updates have been made to the AML Handbook (the **Handbook**) following a recent consultation (which closed on 22 May 2020) on proposals to amend the Handbook to reflect Guernsey's National Risk Assessment on money laundering and financing of terrorism ([here](#)).

The changes, which include two new Appendices to the Handbook (Appendices H and I), aim to provide additional guidance to help firms in identifying high-risk countries and territories for AML and CFT obligations. The intention is that the GFSC will update those Appendices shortly after FATF updates its lists (usually three times a year).

For further information, including the revised Handbook, rules and guidance which are effective from 19 June 2020, view [here](#).

6 Online Portal

The GFSC has upgraded its online PQ Portal, Online submissions and T&Cs.

Of particular note is the ability to register for a new account by agreeing to the T&Cs online. This replaces the previous Online Services Agreement, which originally required a wet ink signature and more recently a scanned copy of the original signed agreement.

For further information, including the Guidance Notes, view [here](#).

7 FATF Guidance

The GFSC has published the Financial Action Task Force's (**FATF**) guidance paper regarding Covid-19 related Money Laundering and Terrorist Financing Risks (the **Report**) ([here](#)).

The Report contains no big surprises – whilst the pandemic has resulted in a downturn in legitimate economic activity, the reverse is true for the criminal world. The opportunities to misuse online and virtual financial services and exploit government support schemes have grown exponentially. The particular risk posed to the offshore world is around ensuring that the innovative methods adopted to overcome the difficulties of verifying customer due diligence and the validity of certain transactions do not undermine the high standards applied in normal times.

The Report identifies certain steps that member countries can take to ensure domestic co-ordination and improving communication but, in the end, the buck stops with the organisations and individuals involved in financial services and the risk frameworks they apply. In that sense there is nothing new in the Report but it is a useful pulling together of the various problems encountered in the FATF community.

8 GFSC Enforcement

The GFSC has issued a public statement in relation to a local licensee, and two individuals, for failing to fulfil the minimum criteria for licensing under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (**POI**) and the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002.

For further information, view our Legal Update [here](#).

The GFSC has imposed financial penalties on two local licensees, one for historical failures to meet the minimum criteria for licensing under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 ([here](#)) and the other in respect of failure to meet the minimum criteria for licensing under the Insurance Business (Bailiwick of Guernsey) Law, 2002 ([here](#)).

The GFSC has also made a successful application to the court to have administrators appointed to a local POI licensee and a registered collective investment scheme ([here](#)).

9 GFSC enforcement process compliant with a licensee's right to a fair trial

The Royal Court has struck out a claim against the GFSC alleging that the enforcement process it adopted was contrary to human rights, primarily the right to a fair trial guaranteed by Article 6 of the European Convention on Human Rights, which is incorporated into Guernsey Law by the Human Rights (Bailiwick of Guernsey) Law, 2000.

View our Legal Update [here](#).

10 ICSA guidance on holding virtual board meetings

The Chartered Governance Institute (**ICSA**) has issued guidance about virtual board meetings. Decision makers must continue not just to meet frequently to discuss any issues that the business faces, but also to properly minute their decisions.

View our Legal Update [here](#).

11 Use of offshore structures

An English case has confirmed that the use of offshore structures does not, of itself, constitute a ground for believing that such structures were intended to be/being used for wrongful purposes and that there had to be some additional evidential basis for such a belief.

View our Legal Update [here](#).

12 LIBOR transition

Despite the challenges created by COVID-19, there continues to be progress on the sterling LIBOR transition (**London Interbank Offered Rate**), which is to be fully retired by the end of 2021.

LIBOR is an interest rate based on submissions provided by a panel of 20 banks, which is intended to reflect the interest rate at which banks could borrow money on unsecured terms in wholesale markets.

The continued reliance of financial markets on LIBOR is considered by the FCA and the Bank of England's Financial Policy Committee to pose a risk to financial stability and as such, lenders are expected to make alternative products available, such as SONIA, before the deadline.

13 Mourant Global Funds Update

We have issued our first Mourant Global Funds Update, which aims to share the latest international legal, regulatory and tax developments impacting the funds industry in each of our jurisdictions.

In the first edition, given current world events, we have included a link to our growing collection of COVID-19 related articles. These explore some of the implications arising from doing business during the pandemic, and how to overcome them from an offshore perspective.

We have also included a link to our latest webinar on the fund financing and LP liquidity issues entitled - Is it fake news? and referenced our recent funds whitepaper which has been contributed to by 18 of our partners globally, and sets out our opinion on the latest trends, insights and our predictions across the full lifecycle of an investment fund with a spotlight on private equity and real estate, across all our jurisdictions.

View our Global Funds Update [here](#).

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