

Guernsey legal and regulatory update

An overview of Guernsey legislative and regulatory developments
1 July 2020 to 31 October 2020

1 Migration of limited partnerships to and from Guernsey

New regulations have been passed to provide an express statutory route for the migration of limited partnerships into, and out of, Guernsey.

Guernsey companies law already provides for the migration of overseas companies into Guernsey, so promoters wishing to migrate their limited partnerships into Guernsey can migrate their general partner companies into Guernsey as well, as part of a streamlined process.

View our Legal Update [here](#).

2 Substance: self-managed funds within scope

Self-managed funds are now within scope of Guernsey's economic substance requirements.

For the purposes of Guernsey economic substance, a self-managed fund is a collective investment vehicle (within the meaning of the Income Tax (Exempt Bodies) (Guernsey) Ordinance, 1989) that does not have anyone exercising any managerial function in relation to an investment (or the assets underlying an investment).

A self-managed fund, which fulfils that criteria, will be required to demonstrate an appropriate level of substance in Guernsey with effect from **1 October 2020**.

Collective investment schemes, which are not self-managed, continue to be out of scope.

3 Proposals to create opportunity for growth in Guernsey funds sector

The Guernsey Financial Services Commission (the **Commission**) has issued a discussion paper entitled 'Funds Growth Omnibus' on proposals to amend certain aspects of Guernsey's funds framework with a view to creating opportunity for growth in the funds sector.

The proposals include exemption from licensing for general partners of Guernsey funds structured as limited partnerships where a Guernsey licensed manager is appointed to assume the primary management role for the fund; the removal of prior approval for non-Guernsey schemes; amendments to the Private Investment Fund regime; and the introduction of a new restricted activity of 'Verifying Green Transactions' under the Protection of Investors (Bailiwick of Guernsey) Law, 1987.

Further information is set out in our Legal Update [here](#).

4 Ancillary vehicles

The Commission has sought feedback on the proposed types of entity and activities which will fall within scope of the notification regime under the provisions of the new Protection of Investors (Bailiwick of Guernsey) Law, 2020 (not yet in force, the **2020 POI Law**).

While a general partner of a Guernsey fund is, and will continue to be, covered by an exemption under the fiduciaries regime, certain types of entity and activities related to fund structures are not currently subject to a statutory exemption. In most cases, those entities seek a discretionary exemption under the Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, for example a general partner of a carried interest vehicle.

This will be addressed by the new Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 (not yet in force) which introduces a new category of exemption for ancillary vehicle activity, subject to prior notification to the Commission under the 2020 POI Law.

View the Discussion Paper [here](#).

5 Data protection: new registration requirements

Amendments to Guernsey's data protection law require all entities established in the Bailiwick who act as data controllers and/or data processors to register with the Office of Data Protection Authority (ODPA).

From 1 January 2021, registered data controllers and/or processors established in the Bailiwick (or their 'Levy Collection Agent') will also be required to file an annual return and pay an annual prescribed fee each year to the ODPA.

Entities that are registered and/or regulated by the Commission may also register with the ODPA as a Levy Collection Agent which will allow them to deal with the registration requirements of, and on behalf of, other entities but do not take on any of those entities' other data protection obligations.

View our Legal Update [here](#).

6 Investment statistics Q2

Following a first quarter 2020 which saw the total net asset value of Guernsey funds under management and administration increase by £5.5 billion (2.4%) to £233.2 billion, the second quarter saw a decrease of £6.4 billion (-2.7%) to £226.8 billion.

Within those totals, Q2 saw Guernsey domiciled open-ended funds increased by £3.1 billion (6.8%) to £47.8 billion (representing an increase of £0.5 billion (1.0%) in the past year) and Guernsey closed-ended funds decreased by £9.4 billion (-5.0%) to £179.0 billion (representing a decrease of £1.4 billion (0.7%) in the past year).

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

7 Mandatory Disclosure Rules

The Mandatory Disclosure Rules are expected to be in place in Guernsey by the beginning of next year, imposing reporting obligations for intermediaries who are promoters or service providers for 'Reportable Arrangements' that meet the trigger threshold.

There are practical steps that should be taken now, including undertaking internal due diligence, developing training and policies and procedures to identify Reportable Arrangements, checking client terms and conditions and/or privacy statements and developing new procedures for collecting the required information and reporting to the Guernsey Revenue Service.

View our Legal Update [here](#).

8 Consultation on cyber security rules and guidance

The Commission has issued a consultation paper seeking feedback on its proposal to introduce Cyber Security Rules (the **Rules**). The proposal follows on from the Commission's 2019 Cyber Risk Thematic, which suggested that local industry supported a set of rules and guidance that follows five core principles, namely Identify, Protect, Detect, Respond and Recover.

The Rules are subject to consultation until 2 November 2020 after which the Commission intends to issue a final set of rules and guidance with direct application to all licensees licensed under Guernsey's regulatory laws.

The Rules represent an international trend towards regulators placing increased importance on the risks surrounding cyber-security. The increase in home-working as a result of the Covid-19 pandemic, together with recent high-profile cyber-crime sanctions highlight the importance of implementing a cybersecurity regime which both mandates and guides licensees towards compliance in this complex and rapidly evolving area of risk.

View our Legal Update [here](#).

9 Possible zero or negative interest rates

The Bank of England is seeking feedback on any potential operational implications that firms may encounter should its Monetary Policy Committee implement a zero or negative policy rate.

In light of this the Commission is advising Guernsey regulated firms to consider if and how they might be affected by the implementation of a zero or negative policy rate, including any contracts that might be materially affected and/or any technical operational issues in their systems.

View the Bank of England's letter [here](#).

10 Exit interviews for MLROs and MLCOs to continue

Exit interviews for individuals holding the position of MLRO and/or MLCO with a bank or fiduciary firm will continue to be run by the Commission until the end of December 2020 and is being extended to individuals holding those roles in both the investment and legal sector.

The pilot initiative, which was rolled out at the beginning of the year, has proven useful and has provided the Commission with a greater understanding of these particular roles, their responsibilities and the challenges faced in the fight against financial crime.

View the announcement [here](#).

11 The economic contribution of Guernsey's funds sector

The States of Guernsey commissioned a report to provide evidence on the economic contribution of Guernsey's funds sector to key jurisdictions around the world, ie the UK, the Rest of Europe, the USA and the Rest of the World and to quantify the value of management fees earned by investment managers in each jurisdiction.

The full report is available [here](#).

12 Mourant Global Funds Update

Various editions of our Global Funds Update, provide the latest international legal, regulatory and tax developments impacting the funds industry in each of our jurisdictions.

The July edition ([here](#)) explains how the scope of the Private Funds Law 2020 in Cayman has been expanded to include vehicles such as AIVs, single investment structures and certain master fund arrangements, with CIMA registration required by 7 August 2020. In other articles, we share with you a set of best practice green and sustainable principles established for the PE industry in Guernsey and explain the imminent changes to Jersey's limited partnership law to facilitate the migration of foreign limited partnerships into Jersey.

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