

Guernsey legal and regulatory update

An overview of Guernsey legislative and regulatory developments
1 March 2021 to 11 June 2021

1 Regulatory Laws – latest news

As noted in last quarter's update, the supervisory and regulatory laws in relation to the investment, banking and fiduciary sectors have been approved by the Privy Council and registered by the Royal Court but are not yet in force. According to a recent announcement made by the Guernsey Financial Commission (the **Commission**) ([here](#)), it is expected that those laws are likely to be enacted towards the end of this year.

Draft rules and regulations under each of those laws have now been published and are the subject of industry consultation, (which is open until **17 June 2021** ([here](#))). According to the consultation paper, these draft rules and regulations do not set out to implement a change in policy and, save for new terminology, will be familiar to licensees.

A second consultation in relation to new draft codes and related guidance has also just been issued (on 10 June 2021 ([here](#)) which closes on **26 July 2021**) with another consultation expected to follow in due course centring on rules which have been omitted from the current consultation (which the Commission consider may require significant changes).

For further detail regarding the status of each individual regulatory law, read our latest Legal Update [here](#).

2 Consultation on Ancillary Vehicles

The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 (the **2020 Law**) (which, as noted above, is expected to come into effect later this year) introduces a new statutory exemption which, subject to prior notification to the Commission, will automatically apply to ancillary vehicles (**AVs**). The Commission is running a consultation on the draft Ancillary Vehicle Rules (the **Consultation**). This follows on from its Discussion Paper issued in August last year which set out the Commission's proposals to introduce a new automatic statutory exemption for activities which are closely related to a fund structure or controlled investment.

The Consultation details the feedback received to the Discussion Paper in relation to the types of vehicles to be considered eligible as an AV, together with the requisite criteria (if a certain type of vehicle is eligible). The key takeaways from the Consultation are as follows:

- there was overall support of the proposal that the new statutory exemption apply to activities relating to **co-investment** and **carried interest** vehicles which are *ancillary to an authorised or registered fund*. These vehicles must however be administered by a licensed fiduciary and, in the case of a co-investment vehicle, owned or controlled by the manager or promoter of the fund
- acting as a director of a general partner (**GP**) of a co-investment or carried interest LP which, as noted above, must be ancillary to an authorised or registered fund will not count towards the 'up to six' directorships limit
- acting as a GP of a **single investor vehicle** (as defined in the draft AV Rules) which is administered by a licensed fiduciary and is not a collective investment scheme will be within scope of the AV regime and

eligible for the new statutory exemption. However the exemption is limited to the GP and does **not** extend to the directors of the GP

- a single asset vehicle will be outside the AV regime (the discretionary exemption is considered suitable)
- the licensed administrator of the AV will be responsible for making the notification (subject to payment of a fee which is yet to be determined). Once a valid notification has been made, the AV can proceed with its proposed activity
- entities which are currently subject to a discretionary exemption are not required to make a notification under the draft AV Rules but are encouraged to do so when circumstances arise (at which time they will be required to surrender their discretionary exemption)
- the new statutory exemption will not expire (as originally proposed) however the licensed administrator is required to notify the Commission of any prescribed changes within 14 days of such change.

For further information, refer to the Consultation ([here](#)) which closes on **17 June**.

3 Economic substance – latest news

In response to Guernsey's commitment to the EU Code of Conduct Group, the Guernsey Revenue Service (GRS) has announced that economic substance requirements which currently apply to companies will be extended to all **partnerships** carrying on a 'relevant activity' (subject to certain exemptions which are currently under review by the EU Commission).

Notably collective investment schemes regulated by the Commission continue to be out of scope (unless self-managed) and any person who is a partner of the partnership is not required to meet the economic substance requirements (rather it will be considered at the partnership level).

Further details, including the GRS announcement, are set out in our Legal Update [here](#).

4 Non-Guernsey schemes – latest news

Following its consultation with industry, the Commission has **revoked** the non-Guernsey scheme regime and its underlying rules, namely the Licensees (Conduct of Business and Notification) (Non-Guernsey Schemes) Rules, 1994 with effect from **11 May 2021**. This means that licensees will no longer be required to notify the Commission of, and seek prior approval for, a proposal to carry on the activities of management, administration **or** custody in connection with a specific non-Guernsey scheme, ie a collective investment scheme that is **not** established or incorporated in the Bailiwick of Guernsey and is **not** authorised or registered by the Commission (NGS).

The revocation does not however affect the requirement that a licensee can only undertake management/administration **and** custody of an NGS if the NGS is itself authorised or registered under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, irrespective that the NGS has been formed or authorised outside of Guernsey.

5 Private Investment Funds – latest news

The Commission has introduced two new routes for registration of funds as private investment funds (PIFs) meaning that there are now three routes:

- **Route 1 and existing PIFs** – which follows the original PIF model with the **continued** requirement of a Guernsey licensed manager. All existing PIFs will be recognised as Route 1 PIFs. The manager of a Route 1 PIF is required to make a declaration to the Commission that it has made the appropriate assessment on the ability of each investor to sustain the loss of its investment and the Commission can request evidence of such assessment.
- **Route 2** – which allows registration of funds **without** the requirement of a Guernsey licensed manager provided that:
 - all investors admitted are Qualifying Private Investors (**QPIs**), which are either 'Professional Investors', 'Experienced Investors' or 'Knowledgeable Employees' (as defined in the new Private Investment Fund Rules 2021 (**PIF Rules**)) and would include an investor who makes an initial investment of not less than US\$100,000, where the amount invested represents no more than 25% of that individual's investible assets
 - a maximum of 50 investors to be admitted to the fund

- marketing must be restricted to QPIs only and the offer of units for subscription, sale or exchange must be capped at 200
- the designated administrator will be responsible for ensuring only QPIs are admitted and effective procedures are maintained and
- investors must receive a disclosure statement in a form prescribed by the Commission ([here](#)).
- **Route 3** – which allows registration of funds (again as for Route 2, **without** the requirement of a Guernsey licensed manager) for family relationships (or an eligible employee of the family). Marketing must be restricted to the family group and the designated administrator is responsible for ensuring that only qualifying family members/employees are admitted to the PIF and that effective procedures are maintained.

The Commission has also set out in the Guidance to the new PIF Rules what it expects of designated administrators in their due diligence procedures over promoters of PIFs.

For further information, read our Legal Guide [here](#).

6 EU's sustainability disclosure measures

The EU's Sustainable Finance Disclosure Regulation (**SFDR**) is part of the EU's package of measures concerning environmental sustainability disclosures and procedures requiring sustainability-related disclosures at both entity and product level.

The SFDR applies to alternative investment fund managers (**AIFMs**) in EU financial markets. It will seemingly apply to non-EU AIFMs within the meaning of the Alternative Investment Fund Managers Directive which are actively marketing funds within the European Economic Area, ie excluding where interests are acquired by European investors following reverse solicitation, although the extent of the SFDR's application to non-EU AIFMs is not yet known. Further guidance is expected in due course.

For further detail, read our Legal Update [here](#).

7 Changes to Guernsey's companies law

A number of amendments have been made to the Companies (Guernsey) Law, 2008 (the **Companies Law**) following States' approval on 28 April 2021.

The amendments, which are effective from **1 May 2021**, are the result of industry feedback to a consultation in 2018 and are intended to ensure that the Companies Law continues to best serve the needs of the business community.

Details of the changes are set out in our Legal Update [here](#).

8 LLCs – proposal to introduce into Guernsey

The States has approved proposals to introduce limited liability companies (**LLCs**) into Guernsey.

An LLC is a flexible hybrid structure combining the features of a company and a partnership, ie limited liability and separate legal personality (akin to a company) and tax transparency (similar to a partnership). An LLC is not dissimilar to a limited liability partnership sharing some of the same key features.

LLCs already feature in a number of other jurisdictions such as the Isle of Man, Cayman Islands, Bermuda and most recently Jersey, and are used in a diverse range of roles such as general partners, management vehicles, carried interest vehicles, portfolio holding vehicles, joint venture vehicles and private equity vehicles. LLCs have traditionally been associated with the United States (**US**) and it is anticipated that the introduction of the Guernsey LLC will ensure that Guernsey remains competitive and attractive to the US market.

Further details are set out in our Legal Update [here](#).

9 Spring Green Consultation Paper

The Commission has published an amendment to the Finance Sector's Code of Corporate Governance (the **Code**) to take into account climate change considerations. The amended Code introduces a new specific requirement that, for financial years starting from **1 October 2021**, requisite consideration is given by the board of a licensee, and the board of an authorised or registered collective investment scheme formed as a

company, to the business's strategy in relation to climate change and where appropriate, make timely climate change related disclosures. More prescriptive rules are likely to follow once general international agreement is reached on what standards should apply to which types of financial services. In the meantime, a board is expected to decide its best approach on how the relevant disclosure should be made.

View the amended Code [here](#). Also read our Legal Update ([here](#)) in relation to the duties of Guernsey directors in relation to climate change.

10 Investment Statistics – Quarter 4 (December 2020)

The investment statistics published by the Commission for December 2020 show that the total net asset value of Guernsey funds increased during the last quarter by £9.4 billion (3.9%) to £245.5 billion, which is broken down as follows:

- Guernsey domiciled open-ended funds increased over the quarter by £1.0 billion (2.0%) to £49.0 billion (representing an increase of £2.7 billion (5.8%) in the past year)
- Guernsey closed-ended sector increased over the quarter by £8.4 billion (4.5%) to £196.5 billion (representing an increase of £15.2 billion (8.4%) in the past year)
- Guernsey Green Funds held a total net asset value of £3.5 billion at the end of the quarter
- Non-Guernsey open-ended schemes had a net asset value of £37.7 billion at the end of the quarter.

The total net asset value of Guernsey funds **and** non-Guernsey open-ended schemes has increased during the last quarter by £10.1 billion (3.7%) to £283.2 billion.

View the investment statistics for December 2020 [here](#).

11 TISE – latest figures

The International Stock Exchange (TISE) has reported a record number of listings for quarter one of 2021 with 225 newly listed securities, the highest since its inception in 1998, taking the total number of listed securities on TISE up to 3,235 as at 31 March 2021. Some of those newly listed securities represent UK Real Estate Investment Trusts, adding to TISE's increasing UK REIT market share, which is currently at more than 40%.

Further detail is available [here](#).

12 Data protection – emails sent in error

The Office of Data Protection Authority (ODPA) has given clarification that an email sent to an incorrect recipient may not be a breach (in which case it may not need to be reported). It all depends on the context the email was sent in, the contents of the email and whether the circumstances pose someone a risk. If in doubt, the ODPA advises you to speak with your Data Protection Officer or to call the ODPA.

Read [here](#) for further information.

13 Regulatory enforcement

The Commission has made several public statements, prohibition orders and/or imposed financial penalties over the last quarter, including:

- a prohibition order against an individual for failing to provide 'full, frank and unambiguous' information in relation to the circumstances surrounding that individual's resignation from previous employment
- a public statement and imposition of a fine of £140,000 against a licensee for failing to fulfil the minimum criteria for licensing under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 and
- prohibition orders and financial penalties on a number of individuals for failing to meet the minimum criteria for licensing (the details of which can be found on the Commission's website [here](#) (Prohibitions) and [here](#) (Public Statements)).

As noted in our Legal Update ([here](#)), public statements such as these provide an understanding of the standards the Commission expects of licensees.

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