

Guernsey legal and regulatory update

An overview of Guernsey legislative and regulatory developments
30 June 2021 to 22 October 2021

1 Regulatory Laws – status

The Revision of Laws project is about to reach its conclusion with Guernsey's new regulatory, supervisory and enforcement legislation due to come into force on **1 November 2021**.

There is a lot which is familiar in the new legislation. There are changes which are 'universal' across the industry sectors and which align the new regulatory laws (for details refer to our Update [here](#)) as well as new provisions and notable changes, both generally and at industry specific level, which we will cover in subsequent Updates over the coming weeks (available on our website www.mourant.com).

The new legislation, including related regulations, rules, codes and guidance is available [here](#).

2 Regulatory Laws - Ancillary Vehicles

The proposal to introduce a new automatic statutory exemption for 'ancillary vehicles', ie vehicles that are closely related to a fund structure or controlled investment which the Guernsey Financial Services Commission (the **Commission**) consulted on earlier this year, is not being taken forward at this time.

Accordingly, while the new Protection of Investors (Bailiwick of Guernsey) Law, 2020 includes enabling provisions for such vehicles, the current discretionary exemption regime continues to apply albeit under the new Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 (the **2020 Fiduciaries Law**). Notably, the 2020 Fiduciaries Law requires an exempt person to notify the Commission in writing **within 14 days** of becoming aware of any change of fact, circumstances or information supplied to the Commission for the purposes of the exemption. This includes 'discretionary exemptions', ie it applies to ancillary vehicles subject to a discretionary exemption. Failure to notify the Commission is a ground for refusal or revocation of the exemption and an offence. The rationale for this new notification requirement is that circumstances may change which may no longer justify the exemption.

3 Financial Crime Risk Returns – filing deadline

A reminder that the filing deadline for the 2021 Financial Crime Risk Return (**FCRR**) is **31 October 2021**. Financial services businesses and prescribed businesses (with a few exceptions) are however advised to submit their FCRR (and any other returns with a filing deadline of 31 October 2021) by **17:00 on Friday 29 October 2021** because of the unavailability of the Commission's Online Submissions Portal between 17:00 on Friday 29 October 2021 and 22:00 on Sunday 31 October 2021. This is due to implementation of the new regulatory laws. There will be a grace period until close of business on Monday 1 November 2021 after which submissions will incur a late penalty fee.

Further information about the FCRR, in particular those persons that are required to complete them, is available [here](#).

4 Guernsey Green Fund Rules – update

Guernsey's Green Fund Rules have been amended with effect from 6 July 2021 to reflect industry feedback.

Amendments include a modification extending the frequency of monitoring of the closed-ended Guernsey Green Fund by a designated administrator against the notified green and investment criteria from a **monthly** to a **quarterly** basis thereby reducing the administrative burden.

View the amended Green Fund Rules [here](#).

5 Crypto funds

The Commission has published a statement on its approach to applications for funds investing in virtual assets or crypto technologies. In considering such applications, the Commission applies the same criteria it uses for other asset types or structures, looking to ensure that key controls are appropriate. It will also apply specific measures to safeguard investors in view of the particular risks involved with virtual assets and crypto technologies.

Read the Commission's statement [here](#).

6 The AML Handbook – update

The Commission has amended the Handbook on Countering Financial Crime and Terrorist Financing (the **Handbook**). Changes include the addition of open-ended schemes, such as exchange-traded funds, which are now included within section 4.8.3 of the Handbook (schemes traded on a recognised stock exchange).

View the Commission's announcement [here](#).

7 Fees 2022 - consultation

The Commission has consulted on four main changes to its fees, namely an overall fee increase for licensed or registered entities of 10.1 per cent; a restructuring of fees for the investment sector; changes arising from the Revision of Laws; and creating a cap for pension scheme fees.

The consultation, which closed on 10 September 2021, is available [here](#).

8 Investment Statistics – Quarter 2 (June 2021)

The investment statistics for **June 2021** ([here](#)) show that the total net asset value of Guernsey funds increased during the last quarter by £9.0 billion (3.4%) to £272.6 billion, broken down as follows:

- Guernsey domiciled open-ended funds increased over the quarter by £2.0 billion (4.2%) to £50.0 billion (representing an increase of £2.2 billion (4.6%) in the past year)
- Guernsey closed-ended sector increased over the quarter by £7.0 billion (3.2%) to £222.6 billion (representing an increase of £43.6 billion (24.3%) in the past year)
- Guernsey Green Funds held a total net asset value of £3.9 billion at the end of the quarter
- Non-Guernsey Schemes (**NGS**) have been revoked from 11 May 2021 with quarterly NGS reporting to be replaced by extending annual reporting on activities in respect of investment assets serviced in Guernsey.

9 OECD Inclusive Framework meeting

Guernsey has agreed to the OECD's 'Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy' ([here](#)).

The Two-Pillar Solution which, as its name suggests, comprises of Pillar One and Pillar Two. Pillar One aims to ensure a fairer distribution of profits and taxing rights amount countries with respect to the largest multinational enterprises (**MNEs**) and Pillar Two puts a floor on tax competition on corporate income tax through the introduction of a global minimum corporate tax at a rate of 15 per cent.

The proposals recognise that investment funds should not be in scope of Pillar 2 and there is an exclusion for regulated financial services from Pillar One ([here](#)).

Guernsey is one of 136 member countries to have done so, representing more 90 per cent of global GDP.

10 EU's sustainability disclosure (SFDR) 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. For further detail, read our Update [here](#).

The three European Supervisory Authorities, EBA, ESMA and EIOPA have developed joint Q&As to support the consistent and effective application of the EU regulatory framework for the financial services sector. These Q&As, one of which concerns SFDR ([here](#)), are based on responses to questions raised by the public, financial market participants, competent authorities, Union institutions and other stakeholders concerning the practical application or implementation of the provisions of SFDR. A useful source of reference.

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.

11 TISE – news

The International Stock Exchange (TISE) has reported new records for the first half of 2021 in relation to:

- the number of listings with over 500 securities listed, taking the total number of listed securities on its Official List to 3,431 as at 30 June 2021 ([here](#)) and
- revenue, profit and earnings per share ([here](#)).

In other news, TISE has:

- revised its Listing Rules to attract Special Purpose Acquisition Companies (SPACs) ([here](#))
- joined:
 - the Association for Financial Markets in Europe (AFME), the leading industry association representing the European wholesale financial markets across a broad range of regulatory and capital markets issues ([here](#)) and
 - the International Capital Market Association (ICMA), a not-for-profit membership association for debt capital markets ([here](#))
- launched:
 - a new market segment, namely TISE Sustainable and joined the United Nations' Sustainable Stock Exchanges Initiative (UN SSE) ([here](#)). TISE Sustainable 'is Europe's most comprehensive sustainable market segment and provides qualifying issuers and their securities with enhanced connectivity, credibility, transparency and visibility among investor' (TISE) and is available to all issuers listed on TISE who comply with at least one recognised framework or rating
 - a new Qualified Investor Bond Market (QIBM) which represents a dedicated exchange offering for the listing of bonds marketed to 'qualified investors' such as institutional investors, professional investors and other investors experienced and knowledgeable in investing in bonds ([here](#)).

12 Data protection – highest number of breach reports since 2019

Latest figures published by the Office of Data Protection Authority (ODPA) are the highest recorded over a two-month period since late 2019. In total 36 breaches were reported from 1 July to 31 August of which 22 concerned information about, or related to, a person sent to the wrong recipient, either by email (13) or post (9).

Further information is available [here](#).

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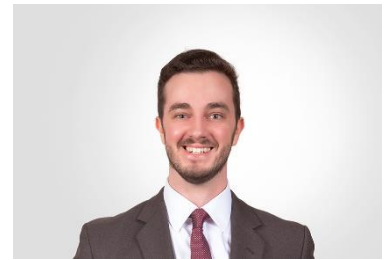
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