

Guernsey legal and regulatory update

An overview of Guernsey legislative and regulatory developments
1 November 2020 to 28 February 2021

1 Regulatory Laws - general update

The Privy Council has formally approved the following supervisory and regulatory laws:

- the Protection of Investors (Bailiwick of Guernsey) Law, 2020
- the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020
- the Banking Supervision (Bailiwick of Guernsey) Law, 2020
- the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020.

These new laws have each been registered by the Royal Court of Guernsey however they are **not** yet in force. We eagerly await the commencement ordinances that will bring them into effect, as well as publication of the rules and regulations, which will be prescriptive in setting out the detail under those laws (noting that the Fiduciary Division updated and consolidated its rules and regulations at the end of last year but the other Divisions, ie Investment, Banking and Insurance, have not).

2 Economic substance – general update

In November, the States of Guernsey Revenue Service (the **Revenue Service**) published long-anticipated official guidance on the impact of COVID-19 on economic substance (**Guidance**) ([here](#)).

The Guidance clarifies that the Revenue Service's earlier guidance, namely 'Guidance on aspects in relation to the economic substance requirements as issued by Guernsey, Isle of Man and Jersey' dated 22 November 2019 ([here](#)) has not changed, although the Revenue Service acknowledges that a temporary framework outlined in its latest Guidance will need to be in place while travel restrictions continue.

The Guidance is more restrictive than that issued by GIBA in March last year (now superseded) in that the Revenue Service expect COVID-19 measures to only impact companies' ability to comply with the **directed and managed test** of the economic substance requirements. The Revenue Service expects companies to continue to meet all of the other economic substance tests.

In other economic substance-related news, the Code of Conduct Group has recommended to the Council of the European Union that, Guernsey, among others, should extend its economic substance requirements to all relevant partnerships by **1 July 2021**, with a transition period of 6 months for existing entities.

Unlike Jersey, Guernsey has not issued a consultation on any necessary changes to our economic substance law and guidance and as such we do not yet know the detail. We would however expect partnerships that are fund vehicles to be exempt.

3 Non-Guernsey Schemes – proposed de-regulation

The Guernsey Financial Services Commission (the **Commission**) has published a consultation on proposals to revoke the Licensees (Conduct of Business and Notification) (Non-Guernsey Schemes) Rules, 1994 (the **NGS Rules**) and changing the Non-Guernsey Scheme regime.

A Non-Guernsey Scheme (**NGS**) is a collective investment scheme that is not established or incorporated in the Bailiwick of Guernsey (the **Bailiwick**) and is not authorised or registered by the Commission.

Under the current regime, an entity licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (a **POI licensee**) that intends to manage, administer or provide custody to an NGS is required to give prior written notice to, and seek formal approval from, the Commission before commencing any of those restricted activities in respect of each NGS (note that a POI licensee may act for an NGS which is authorised in Jersey, Isle of Man, United Kingdom and Ireland without prior approval). Once approved, the POI licensee is subject to the NGS Rules, which are currently only applied in practice to restricted activities carried out in connection with open-ended collective investment schemes.

Under the proposals, the requirement for prior notification and approval will be removed and replaced with a requirement that the POI licensee submits additional information in its annual return on the activities it has undertaken in respect of **all** investment assets serviced in Guernsey. The fees associated with NGS, ie notification and annual fees, will naturally fall away.

The Consultation closed on 27 January 2021.

4 Private Investment Funds – alternatives to the current registration approach

The Commission has consulted on proposals to introduce alternative approaches to the registration of a Private Investment Fund (**PIF**), which will be in addition to the current approach.

Currently, a POI licensed fund manager (the **Manco**) is required and responsible for the management of a PIF. At the application stage, the proposed Manco is required to make certain declarations to the Commission on the suitability and maximum number of investors, along with the completeness and accuracy of the application.

Under the new proposals, a Manco is not required. As an alternative, either (i) the POI licensed fund administrator would be required to provide the necessary confirmations (equivalent to those currently provided by a fund administrator in respect of a Qualified Investor Fund (**QIF**)) **and** all investors would have to meet qualifying investor criteria or, alternatively (ii) the POI licensed fund administrator would be required to provide confirmation that effective procedures are in place to ensure that the PIF was restricted to only eligible family-related investors with no capital raising from outside of this relationship.

Either alternative would remove the need for Manco, which is most likely to be a cost benefit, particularly if Manco has been established solely for the purpose of compliance with the PIF regime as may be the case with PIFs which are companies.

The Consultation closed on 1 February 2021.

5 Private Investment Funds – revised Form PIF

The Commission has revised the application form for PIFs (**Form PIF**). Essentially the changes require the following additional information:

- provision of the proposed manager's Business Risk Assessment as evidence that the business has considered the financial crime risks to which it may be exposed once its business activities commence, and how it will address them
- any other restricted activities (and in relation to which category) the proposed manager requires (in addition to that of management of Category 1 controlled investment business)
- the name of the auditor of the proposed fund and manager
- whether the proposed fund has a prospectus (or equivalent) and if so, to provide a copy.

6 Designated Custodians of open-ended schemes - GFSC Guidance

The Commission has issued guidance setting out the standards of conduct expected of Designated Custodians of open-ended collective investment schemes where scheme assets are held indirectly, for example through a separate legal holding structure (the **Designated Custodian Guidance** ([here](#))).

Designated Custodians are expected to be able to demonstrate knowledge of the underlying assets of the scheme and the Designated Custodian Guidance presents ways of doing this, including (i) the requirement to look-through to the ultimate assets (the Custodian's responsibility does not stop at the asset holding

level), (ii) taking a risk-based approach, (iii) ownership verification and (iv) documentation and record keeping around the safekeeping of the assets.

The Designated Custodian Guidance, which will be taken into account by the Commission when assessing compliance with the minimum criteria for licensing under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, does not apply to (i) assets in an underlying structure held by a regulated custodian or (ii) an asset which is an Operating Company, ie a company which makes goods/provides a service that it then sells to customers/clients.

7 Cyber Security Rules and Guidance - update

Following a six-week industry consultation in 2020, the Commission has finalised and published new Cyber Security Rules (the **Cyber Rules**) and Guidance 2021 which apply to all licensees under Guernsey's regulatory laws and which can also be used by non-licensed firms such as Prescribed Business or Non-Regulated Financial Services Business.

The Cyber Rules focus on five core principles outlined in a number of international cyber security frameworks, namely Identify, Protect, Detect, Respond and Recover, with the Board having ultimate responsibility for ensuring that the Rules are followed.

The Cyber Rules have **immediate effect**, with transitional arrangements allowing firms to implement changes to their internal controls to ensure compliance with the new Rules by **9 August 2021**, and replace the Commission's earlier cyber security guidance.

The Cyber Rules and Guidance are available [here](#).

8 The Handbook – update

Changes have been made to Chapters 3 and 7 (Risk-Based Approach and Legal Persons and Legal Arrangements) of the Handbook on Countering Financial Crime and Terrorist Financing (the **Handbook**) in addition to updates to Chapter 12 (international sanctions) to reflect the new mechanisms for the implementation of UN and UK sanctions in Guernsey following BREXIT.

The revised Handbook, which is applicable to all financial services businesses and prescribed businesses, is effective from **15 February 2021** and available [here](#).

9 Investment Statistics – Third (September) Quarter 2020

The official investment statistics published by the Commission for September 2020 show that the total net asset value of Guernsey funds increased during the quarter by £9.3 billion (4.1%) to £236.1 billion, which is broken down as follows:

- Guernsey domiciled open-ended funds increased over the quarter by £0.2 billion (0.4%) to £48 billion (representing a decrease of £0.2 billion (-0.5%) in the past year)
- Guernsey closed-ended sector increased over the quarter by £9.1 billion (5%) to £188.1 billion (representing an increase of £7.9 billion (4.4%) in the past year)
- Guernsey Green Funds held a total net asset value of £3.3 billion at the end of the quarter
- Non-Guernsey open-ended schemes had a net asset value of £37 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 £7.2 billion (2.7%) to £273.1 billion.

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

10 TISE – update

The Listing Rules of the International Stock Exchange (**TISE**) have been revised and are effective from 1 January 2021 (available [here](#)).

Despite the impact of COVID-19, TISE saw its second highest annual total of new listings in 2020 with a listing of 831 securities, a rise of 27%, with a trend towards corporate refinancing. TISE has also maintained its position as a leader in the European high yield bond market, listed debt securities on TISE have included a growing number of securitisations with major UK banks and global financial institutions and TISE continues to grow its market share in UK Real Estate Investment Trusts (**REITS**).

Further information, including TISE expectations for 2021, is available [here](#).

11 Data protection: new registration requirements

The deadline requiring 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), and pay an annual fee, has now passed (28 February 2021).

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.

12 Income Tax – extension for filing

The filing deadline for the calendar year 2019 income tax return has been further extended to **31 March 2021**. Any returns filed on 1 April 2021 onwards will be considered late and incur an automatic penalty with further penalties for each day the tax return remains outstanding.

Details on how to complete and submit tax returns are available on the Revenue Service's website [here](#).

13 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.

In our latest edition ([here](#)) we highlight some of the trends of 2020 emerging themes and key developments that have occurred during 2020, providing an overview of the global offshore funds market.

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