

# Guernsey funds legal and regulatory update

UPDATE

An overview of Guernsey funds legislative and regulatory developments  
1 September 2022 to 30 November 2022

## 1 Natural capital fund regime – launch

The Guernsey Financial Services Commission (the **Commission**) has launched the 'Natural Capital Fund' framework. This is a new offering in Guernsey's 'Sustainable Funds Regime' complementing the existing regulated 'Guernsey Green Fund' regime. Together, they are designed to provide Guernsey funds with a suite of sustainability designations based on international standards.

The Natural Capital Fund regime has a broader, nature-focussed, scope than the Guernsey Green Fund regime, the focus of which is centred on climate change mitigation and adaptation. The extent of the Natural Capital Fund regime includes schemes which, through their activities, commit to significantly reducing environmental harm to the natural world as well as those which aim to contribute positively.

Any class of Guernsey fund can notify of its intention to be designated as a Natural Capital Fund whether registered or authorised, open-ended or closed-ended, providing that it meets the eligibility criteria and that its objectives align with one of the options set out in the Natural Capital Fund Rules and Guidance, 2022 ([here](#)), which are currently:

- the United Nations Convention on Biological Diversity's Post 2020 Global Biodiversity Framework's 2030 Action Targets
- the United Nations Sustainable Development Goals 12-15 or
- the European Union Taxonomy for Sustainable Activities' Environmental Objectives (c) to (f).

Further information can be found on the Commission's website [here](#).

## 2 Guernsey Green Fund – new green criteria

The Commission has expanded the Guernsey Green Fund green criteria to include the EU Taxonomy for Sustainable Activities technical screening criteria for determining the conditions under which an economic activity qualifies as contributing to climate change adaptation. Not only does this addition adopt an internationally recognised definition of sustainable investment but it also expands the scope of the Guernsey Green Fund Rules and Guidance, 2021 (the **Green Fund Rules**) to more clearly include climate change adaptation-related investment strategies.

The Green Fund Rules are available [here](#).

## 3 Anti-greenwashing guidance - publication

The Commission has published guidance for funds on measures to counter the risk of greenwashing (the **Guidance**).

This Guidance applies to all authorised or registered funds and to those responsible for preparing the prospectuses and other marketing materials of such funds. Where the rules applicable to a class or type of fund require the preparation of a prospectus, they also require the disclosure of the fund's investment objectives and policy and/or any relevant investment restrictions within that document. The Commission's expectation is that this disclosure requirement extends to ensuring that any explicit claims, or statements,

indicating that the fund or its underlying assets are environmentally sustainable investments, are not misleading and that relevant information is provided to allow potential investors to understand how the sustainable investment objective is intended to be achieved and how that will be monitored, measured, reported and kept up to date. Similar levels of transparency are expected with related marketing materials.

The Guidance indicates that disclosures compliant with the EU's Sustainability-related Financial Disclosure Regulations (**SFDR**) would be deemed compliant with the Guidance.

The Guidance was issued on 20 September 2022 and is available [here](#).

#### **4 Professional indemnity insurance – excess**

Following industry feedback to the changes made to the requirements for professional indemnity insurance (**PII**) under the Licensees (Capital Adequacy) Rules and Guidance, 2021, the Commission has issued a notice removing the requirement to deduct the PII excess in the calculation of net assets in respect of a licensee with no physical presence in the Bailiwick of Guernsey (the **Bailiwick**), which is administered by another licensee in the Bailiwick and which is a general partner, manager or investment adviser of a fund authorised or registered under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (the **POI Law**).

The Commission's notice is available [here](#).

#### **5 AML/CFT Handbook – amendment**

Section 4.8 (Collective Investment Schemes) of the Handbook on Countering Financial Crime and Terrorist Financing (the **Handbook**) has been updated whereby the Commission will consider the appointment of a third-party liquidator as a suspended fund's 'nominated firm'. A fund which has had its authorisation or registration suspended continues to be authorised or registered (as the case may be) for the purposes of the POI Law and is therefore required to maintain its nominated firm which is responsible for meeting the requirements of Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 and the Handbook for investors into the fund (in addition to its own obligations).

The updated Handbook is available [here](#).

#### **6 'Six director' exemption – consultation**

A consultation has been issued on proposals to introduce a registration framework for directors who rely on the 'six directorship' exemption under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 (the **Fiduciaries Law**).

Currently individuals who hold directorships of six or less (being directorships which are not subject to another exemption under the Fiduciaries Law) are not required to hold a personal fiduciary licence. While those individuals are still subject to anti-money laundering and counter-terrorism financing obligations, it is not possible currently for the Commission to establish any system to monitor or verify compliance with their obligations (which was a point raised by MONEYVAL in 2015).

The proposals will not directly impact individuals who rely on other exemptions under the Fiduciaries Law, including employees/officers of licensed corporate service providers holding directorships in the course of their duties (such as licensed company administrators and fund administrators) and directors of supervised bodies (such as authorised/registered funds and licensed insurers and insurance managers). It is also proposed that individual directors of companies administered by a licensed corporate service provider (which also acts as the company's resident agent) and individual directors of charities and other non-profit organisations will be exempt from the registration requirement.

The consultation is available [here](#) and closes on **16 January 2023**.

#### **7 Register of beneficial ownership - news**

In a landmark decision the European Court of Justice (**ECJ**) has ruled that the provision of the EU's Fourth Anti-Money Laundering Directive (EU2015/849) as amended by the Fifth Directive (EU2018/843) (the **EU Directive**) which requires that the beneficial ownership of legal entities is generally and publicly available infringes fundamental rights to privacy and data protection under the EU Charter of Fundamental Rights (Articles 7 and 8) and is therefore invalid.

As a Crown Dependency, Guernsey made a commitment to the EU in 2019 to have a beneficial ownership strategy that leads to the implementation of a register of beneficial ownership of companies on an essentially equivalent basis to the EU Directive via a three-step action plan.

We will be monitoring how Member States and, closer to home, the Crown Dependencies respond to the ECJ ruling ([here](#)) which will, at the very least, provide an opportunity to pause and reflect on current proposals.

## 8 Lending credit and finance – update

The new Lending Credit and Finance (Bailiwick of Guernsey) Law, 2022 will come into force in two parts: initially on 1 January 2023 to enable licence applications and on 1 July 2023 when the LCF Law will be fully operational.

The Commission's latest announcement ([here](#)) indicates that publication of the final rules and guidance that will underpin the LCF Law, the list of exemptions and FAQs are now expected by the end of **January 2023** at which time the licence application window will open.

For an overview of the different aspects of the LCF Law and to keep up to date with its development, visit our dedicated Lending Credit and Finance Hub [here](#).

## 9 Investment statistics

The investment statistics for **Quarter 2 2022** ([here](#)) show that the total net asset value of Guernsey funds decreased during the previous quarter by £6.8 billion (-2.2%) to £302.8 billion, broken down as follows:

- Guernsey domiciled open-ended funds decreased by £0.2 billion (-0.3%) to £54.2 billion (representing an increase of £4.2 billion (8.5%) in the past year)
- Guernsey closed-ended sector decreased by £6.6 billion (-2.6%) to £248.6 billion (representing an increase of £26.0 billion (11.7%) in the past year) and
- Guernsey green funds held a total net asset value of £5.3 billion at the end of the quarter.

## 10 Economic substance – withdrawal of Covid-19 Guidance

The Guernsey Revenue Service has withdrawn guidance on its approach in assessing compliance with substance requirements during the imposition of Covid-19 related restrictions.

The purpose of the guidance, which was issued on 25 November 2020 (the **Covid-19 Guidance**), was to establish a temporary framework during the pandemic recognising that Covid-19 related restrictions, ie travel caused some companies concern about their ability to meet the substance requirements during that time.

The Covid-19 Guidance has been withdrawn with effect from 1 November 2022.

## 11 TISE – news

The International Stock Exchange (**TISE**) has launched a new transition offering within its sustainable finance segment, TISE Sustainable meaning that it now caters for transition bonds and transition issuers, supporting initiatives which lead to a lower carbon economy and society. Further details [here](#).

## 12 Data protection – news

The Office of Data Protection Authority (**ODPA**) has issued a reminder to local organisations relying on the European Commission's Standard Contractual Clauses to safely transfer people's data outside of the Bailiwick to ensure that they are using the updated Standard Contractual Clauses published in June 2021 ([here](#)), at the very latest by **27 December 2022**. Further information is available [here](#).

In other news, breach statistics for July and August 2022 reveal that 18 personal data breaches were reported which was low however the number of people affected was high because of a single reported incident that led to the accidental destruction of many records containing people's names, dates of birth and medical information. Further details are available [here](#).

The number of personal data breaches reported during September and October 2022 was 24, one of which was discovered because of a company's routine threat analysis of its computer systems, highlighting the importance of carrying out regular internal security reviews. Further details are available [here](#).

## Contacts

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**Darren Bacon**  
Partner | Advocate  
Mourant Ozannes (Guernsey) LLP  
Guernsey  
+44 1481 731 503  
[darren.bacon@mourant.com](mailto:darren.bacon@mourant.com)



**Frances Watson**  
Partner | Advocate  
Mourant Ozannes (Guernsey) LLP  
Guernsey  
+44 1481 739 331  
[frances.watson@mourant.com](mailto:frances.watson@mourant.com)



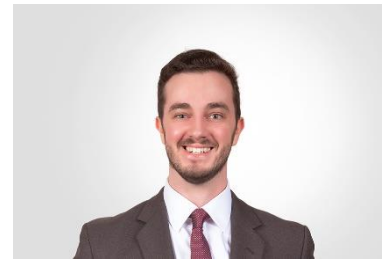
**James Cousins**  
Counsel | Solicitor (England & Wales) non-practising  
Mourant Ozannes (Guernsey) LLP  
+44 1481 739 329  
[james.cousins@mourant.com](mailto:james.cousins@mourant.com)



**Charlotte Brown**  
Senior Associate | Advocate  
Mourant Ozannes (Guernsey) LLP  
+44 1481 739 317  
[charlotte.brown@mourant.com](mailto:charlotte.brown@mourant.com)



**Gary Hall**  
Senior Associate | Solicitor (England & Wales) non-practising  
Mourant Ozannes (Guernsey) LLP  
+44 20 7796 7615  
[gary.hall@mourant.com](mailto:gary.hall@mourant.com)



**Alasdair McKenzie**  
Associate | Solicitor (England & Wales) non-practising  
Mourant Ozannes (Guernsey) LLP  
+44 1481 731 506  
[alasdair.mckenzie@mourant.com](mailto:alasdair.mckenzie@mourant.com)



**Annaliese McGeoch**  
Associate | Advocate  
Mourant Ozannes (Guernsey) LLP  
+44 1481 731 425  
[annaliese.mcgeoch@mourant.com](mailto:annaliese.mcgeoch@mourant.com)

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