

# Guernsey funds legal and regulatory update

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An overview of Guernsey legislative and regulatory developments relevant to investment funds for the period 1 December 2022 to 28 February 2023

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## 1 Corporate insolvency regime – update

The Companies (Guernsey) Law, 2008 (Insolvency) (Amendment) Ordinance, 2020 (the **Amendment Ordinance**) finally came into force on **1 January 2023**.

The Amendment Ordinance introduces changes relevant to company liquidation and administration aimed at further improving and updating Guernsey's corporate insolvency regime and enhancing the powers of the liquidator and administrator. It is important to note that these changes will only apply to insolvency appointments which commence on or after **1 January 2023**.

Further details are available on our dedicated 'Guernsey Insolvency Regime Hub' [here](#).

## 2 Register of beneficial ownership – update

The Crown Dependencies (Guernsey, the Isle of Man and Jersey) have issued a joint statement ([here](#)) indicating a short delay in implementing their commitment made in 2019 concerning registers of beneficial ownership of companies to allow them to consider the impact of the recent judgment of the Court of Justice of the European Union (the **ECJ**).

The ECJ ruled that the provision of the EU's Fourth Anti-Money Laundering Directive (EU2015/849), as amended by the Fifth Directive (EU2018/843), which requires that information as to 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.

We have published commentary on what next for public registers of beneficial owners [here](#).

## 3 Lending credit and finance – update

Various provisions of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the **LCF Law**) are now in force (effective **1 January 2023**), with full implementation from **1 July 2023**.

The Guernsey Financial Services Commission (the **Commission**) has published the final rules and guidance which underpin the LCF Law ([here](#)), together with a notice setting out the various exemptions from the licensing requirement under the LCF Law ([here](#)).

The Commission is accepting licence applications from **1 February 2023** and those applying before **31 March 2023** will benefit from a 50 per cent discount on the application fee. It anticipates that a significant number of licence applications will be received and is aiming to process any application received before 31 March 2023 by **1 July 2023**. The application forms are available [here](#).

For an overview of the different aspects of the LCF Law, including most recently the licensing process, visit our dedicated Lending, Credit and Finance Hub [here](#).

## 4 Director exemption - consultation

The Commission has issued a consultation on its proposal to add a new exemption from the licensing requirement under section 3 of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 (the **Fiduciaries Law**) specifically for directors of companies that form part of the wider structure of registered or authorised collective investment schemes.

Often companies within one structure will have common directors and will be administered by the same licensed firm responsible for ensuring compliance with AML/CFT obligations. However, the treatment of each directorship activity may not be the same under the Fiduciaries Law and an individual may be required to hold a personal fiduciary licence (if not otherwise licensed or exempt).

To be eligible for this new category of exemption, a director must be an individual acting as a director of a company which is:

- connected to a collective investment scheme registered or authorised under the Protection of Investors (Bailiwick of Guernsey) Law, 2020
- administered by the same person appointed as the designated administrator of that connected scheme and
- subject to relevant AML and CTF requirements.

The consultation ([here](#)) closed on **23 January 2023**.

## 5 Investment statistics – Quarter 3 of 2022

The investment statistics for Quarter 3 of 2022 ([here](#)) show that the total net asset value of Guernsey funds increased during the previous quarter by £12.8 billion (4.4 per cent) to £302.7 billion, broken down as follows:

- Guernsey domiciled open-ended funds decreased by £0.6 billion (-1.1 per cent) to £53.6 billion (representing a net increase of £1.4 billion (2.7 per cent) in the past year)
- Guernsey closed-ended sector increased by £0.5 billion (0.2 per cent) to £249.1 billion (representing an increase of £11.3 billion (4.8 per cent) in the past year)
- Guernsey Green Funds held a total net asset value of £5.6 billion at the end of the quarter.

## 6 Natural Capital Fund – updated Rules

Following the launch of the 'Natural Capital Fund' framework in September 2022, the Commission has updated the rules that underpin the Natural Capital Fund regime to ensure that the framework reflects the international agreement made between the 188 governments around the world at COP 15 in December 2022. The newly agreed framework centres on the goal of '30 by 30' – a target to achieve the effective conservation and management of at least 30 per cent of the world's land, coastal areas and oceans as well as the restoration of 30 per cent of terrestrial and marine ecosystems by 2030.

The updated rules, The Natural Capital Fund Rules and Guidance, 2022, are available [here](#).

## 7 AML/CFT - thematic review of business risk assessments

The Commission has published its Thematic Review on Money Laundering and Terrorist Financing Business Risk Assessments (the **Review**) of over 100 licensed and registered firms across all sectors.

The results were largely positive, demonstrating that most met the Bailiwick's regulatory requirements. The Review identified seven areas for improvement, and two areas in particular have been highlighted by the Commission, based on the prevalence of the issues identified throughout the sample:

- Terrorist financing (**TF**) risk assessments less developed compared to money laundering (**ML**) risk assessment

Firms should use the National Risk Assessment to help them improve upon identifying the TF risks which are relevant to their business; and are encouraged to revisit where their TF vulnerabilities exist from their customers, jurisdictions, products, services; transactions and delivery channels.

- Tailoring to specific ML and TF risk assessments

Firms should consider where they can enhance their ML and TF business risk assessments through increased use of management information about their customers, jurisdictions, products, services, transactions and delivery channels and the nature of the underlying predicate offences in suspicious activity reports.

A copy of the Review is available [here](#).

## **8 Regulatory enforcement**

The Commission made various sanctions during December 2022 and January 2023 imposing financial penalties and prohibition orders, including a financial penalty of £203,000 on a licensee and £33,810 on its employee for failing to meet the minimum criteria for licensing under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 and the Protection of Investors (Bailiwick of Guernsey) Law, 2020. The individual is also prohibited from holding the position of controller, director, money laundering reporting officer and money laundering compliance officer for a period of three years and four months.

Further details are available [here](#).

## **9 Data protection – news**

The Office of the Data Protection Authority (ODPA) issued guidance ([here](#)) for administrators and administered entities to assist them in determining whether they are required to register with the ODPA.

In other news, breach statistics reveal that 28 personal data breaches were reported to the ODPA during November and December 2022, bringing the total number of reported breaches in 2022 to 151, a reduction of 26 compared to 2021. One of the breaches related to an employee, who had authorised access to company data during their contract, sending an email with confidential information to several people connected with the company after their employment was terminated.

Further details are available [here](#).

## **10 TISE – news**

The International Stock Exchange (TISE) has reported that 2022 was a very successful year with more new listings than at any other time since it opened for business in October 1998. TISE reported that it ended the year with a total of 4,020 securities on its Official List, with 956 new listed securities. The Qualified Investor Bond Market continues to grow, with 2,370 new issuances listed in 2022 (comprising 940 entirely new security classes and 1,430 further issues to existing listings).

Full details are available [here](#).

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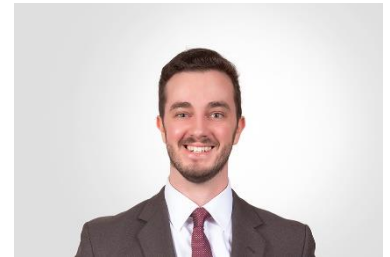
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