

Guernsey funds legal and regulatory update

UPDATE

An overview of Guernsey legislative and regulatory developments relevant to investment funds for the period 1 December 2023 to 29 February 2024 inclusive

1 Surrender of authorisation or registration of a collective investment scheme

The Guernsey Financial Services Commission (the **Commission**) has published an explanatory note ([here](#)) setting out the circumstances under which it will consider a request for its consent to the surrender of the authorisation or registration of a collective investment scheme (**CIS**) under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (**POI Law**).

Consent to a surrender of authorisation/registration request will typically be given once the Commission has received evidence that the liquidation or winding down of the CIS is fully complete and there are no residual or outstanding regulatory concerns.

The Commission will also be prepared to consider requests once a CIS has entered into liquidation or dissolution, but prior to the completion of those processes, subject to meeting certain criteria, which include:

- in the case of a company scheme, the appointment of a liquidator who is either a firm registered with the Commission as a prescribed business firm (**PB Firm**) or an employee of such firm and such PB Firm assumes responsibility for anti-money laundering/countering the financing of terrorism (**AML/CFT**) matters in a manner satisfactory to the Commission and
- in the case of a limited partnership scheme, there is a reasonable explanation for the retention of the remaining assets (eg illiquid assets or contingent claims) and the scheme's general partner (where it is liquidating trustee) retains its licence under the POI Law or, if it is not required to be licensed, another licensee under the POI Law assumes responsibility for AML/CFT matters.

2 Annual validation – change of filing period

The Guernsey Registry (the **Registry**) has advised that the date by which all limited partnerships (**LP**), limited liability partnerships (**LLP**) and foundations have to file their annual validations (**AV**) has changed to **31 March 2024** (from **June 2024**) and each following year ([here](#)).

The AV must contain details of the entity as at the last day of February, ie **29 February 2024**. The AV forms can be accessed through the Registry's portal ([here](#)) and, in the case of an entity not administered by a corporate service provider, an authorised filer declaration ([here](#)) will also need to be completed for each individual entity.

The Registry has prepared guidance on the questions contained on the AV in respect of each type of entity (guidance for LPs is available [here](#), for LLPs [here](#) and foundations [here](#)).

3 Guernsey's contribution to the UK economy

An independent research report, The Value of Guernsey's Financial Services Industry to the UK Economy (the **Report**) ([here](#)), details the ways in which Guernsey supports and partners with the UK and how Guernsey's financial services sector generates significant income for the UK economy.

Among the key findings are that:

- Guernsey-based funds, which currently hold UK assets worth £57 billion, channel significant investment into the UK economy
- Guernsey fund investment in the UK has grown by 14 per cent per year since 2020 at a time when foreign direct investment into the UK is falling
- investments made by Guernsey funds are spread across a number of key asset types such as private equity (£26 billion), property (£11 billion) and infrastructure (£8 billion) and generate not only private returns for investors, but also more widely social returns for the UK as a whole, including benefits for UK residents from improved infrastructure in the energy, health or education sectors as well as more extensive social housing stocks, and
- many of the funds domiciled in Guernsey are also managed by UK investment managers. The Report's analysis suggests that UK-based fund managers generate £2 billion of fees annually from Guernsey-based funds.

4 Beneficial ownership registers in the Crown Dependencies

The Crown Dependencies have issued a joint public commitment ([here](#)) to extend access to the information held on their registers of beneficial ownership for those with a 'legitimate interest' before the end of 2024, with appropriate safeguards to manage effectively any interference with privacy rights.

For these purposes, a 'legitimate interest' means those financial services businesses who are required to conduct customer due diligence and/or organisations who can demonstrate legitimate interest in accessing relevant information in order to combat financial crime.

The 'legitimate interest' approach is intended to recognise that '*there is a crucial balance to strike between protecting human rights and combatting financial crime*' which accords with the recent decisions in the Court of Justice of the European Union and the European Court of Human Rights.

5 General Licence – Russia

A new general licence (GY/RUSSIA/2024/4 ([here](#))) has been issued in relation to CIS under the Russia (Sanctions) (EU Exit) Regulations, 2019 (the **Regulations**). The general licence exempts certain acts which would otherwise be in breach of prohibitions under Regulations 11 to 15 of the Regulations, ie asset freeze in relation to a designated person; making funds to, or available for the benefit of, a designated person; and making economic resources available to, or for the benefit of, a designated person, to the extent required to give effect to the permission of the general licence.

This new general licence widens the scope of the previous general licence (GY/RUSSIA/2023/26) by extending it to the situation where the only nexus to the Bailiwick is that an investment interest in a CIS is managed by a local investment manager. **Prior** notification of an intention to rely on the general licence must be given to the States Policy & Resources Committee (the **Committee**) and subsequently a monthly report setting out the details of any such activity carried out the previous month. Further information is available [here](#).

6 S&P Global affirms Guernsey's credit rating

In January 2024, S&P Global affirmed Guernsey's credit rating at A+/A-1 with a stable outlook ([here](#)). This grading confirms that Guernsey has an investment grade rating.

S&P Global's credit rating assessments are typically used by prospective lenders and businesses seeking to invest in Guernsey to help assess the level of risk associated with the jurisdiction.

7 Enforcement decisions

In February 2024, the Commission published notice of the fact of a prohibition order and a discretionary financial penalty against an individual for deliberately or recklessly making a number of false and/or misleading statements when completing their personal questionnaire (**Form OPQ**) in connection with an application for licensing of an investment manager and authorisation of a CIS. The Commission uses the Form OPQ as one of its primary tools to assess whether an individual is 'fit and proper' to hold a prescribed position. Further details are available [here](#).

In January 2024, Guernsey's Court of Appeal allowed an appeal by the Commission overturning a Royal Court judgment against a decision to impose discretionary financial penalties and prohibition orders on three persons. This judgment has confirmed the legal framework against which the provisions of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 should be determined. Further details can be found in our legal update [here](#).

8 National Risk Assessment – second assessment

In December 2023, the Committee published the Bailiwick's second National Risk Assessment (the **NRA**) ([here](#)). The NRA assesses the money laundering and terrorist financing risks presented by individual sectors and products within the jurisdiction and incorporates the first assessment (published in January 2020) of risks in relation to the financing of proliferation of weapons of mass destruction (**PF**).

The NRA notes that, relative to private banking and the trust and corporate service provider sectors, the investment sector contains a low number of high-risk customers and very low number of foreign politically exposed persons and there is very little reliance on third parties to perform elements of customer due diligence. In addition, all types of authorised and registered schemes must appoint a designated administrator, which is licensed by the Commission and which is required to comply with Guernsey's AML/CFT obligations.

In light of the above mitigants, the NRA assesses the residual risk rating for the CIS element of the investment sector, where over 85 per cent is in closed-ended schemes, as medium.

9 AML/CFT Handbook - update

Following consultation, the Commission has updated the Handbook on Countering Financial Crime (the **Handbook**) ([here](#)) to support the extension of the existing obligations upon specified businesses to countering PF, including amendments to:

- the rules and guidance in the Handbook relating to PF, including setting a date for specified businesses to have undertaken a PF business risk assessment before **31 December 2024**
- Chapter 12 of the Handbook, reflecting the changes to the Bailiwick's sanctions framework post-Brexit
- references to the NRA to reflect the publication of the Bailiwick's second NRA and first PF NRA, and
- the rules and guidance on pooled bank accounts, including facilitating the provision of banking services to local, non-financial services businesses.

10 EU data adequacy status - update

In January 2024, the States of Guernsey announced that the European Union (the **EU**) has confirmed that the Bailiwick's privacy laws satisfy EU data adequacy status.

Achieving 'EU data adequacy status' confirms the Bailiwick as a leading jurisdiction for safe and secure data. It means that EU Member States and institutions regard the Bailiwick's legislative framework as ensuring an adequate level of protection, ie comparable to that of EU Member States, for the safe flow of data between the EU and the Bailiwick.

Further details can be found [here](#).

11 Commission – newsletter

In January the Commission launched its newsletter, **The Leopard**, which aims to provide industry and other interested parties with a digest of recent news and updates, as well as to look ahead at what's coming up and the Commission's priorities.

The January 2024 edition of The Leopard can be accessed [here](#) (you can sign up to receive the newsletter [here](#)).

12 TISE – news

In January 2024, the International Stock Exchange reported the first issuer to be admitted to its sustainable finance segment by virtue of its environmental, social and governance rating. Further details can be found [here](#).

Contacts



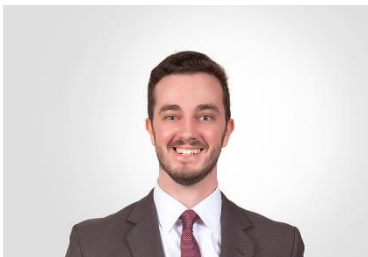
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