

Guernsey and Jersey Application of the Sustainable Financial Disclosure Regulation (SFDR)

Insights - 22/03/2021

The Sustainable Financial Disclosure Regulation (SFDR) regime is designed to increase transparency in how sustainability risks and opportunities are integrated into the investment decisions and recommendations of financial market participants.

The "Level 1" text of the SFDR came into force on 10 March 2021, and "Level 2" came into effect in January 2023, and took the form of the SFDR Regulatory Technical Standards (RTS), which provide a framework for a harmonised approach by firms in collecting and disclosing environmental sustainability information to meet the SFDR. Read our [full update on the implementation of SFDR](#).

Firms that are directly within scope will need to make certain disclosures at an entity level and product level respectively.

| To which firms does SFDR apply?

SFDR applies directly to European Union regulated firms that manage money or advise on investments or investment strategy, which means that it will apply to banks, pension providers, investment firms providing single-managed account services, asset managers such as AIFMs or UCITS management companies.

| Applicability of SFDR in Guernsey and Jersey

On 7 January 2021, the ESA wrote to the European Commission seeking "urgent clarification" on a number of fundamental questions relating to the application of SFDR, including the extent to which SFDR applies to non-EU AIFMs (for example AIFMs based in Guernsey or Jersey). Whilst the European Commission has not responded to this letter to date, the investment funds industry

has been (generally) proceeding on the basis that non-EU AIFMs that market their AIFs into the European Union are likely going to be in-scope.

There are broadly two ways in which the SFDR could impact Guernsey and Jersey in-scope firms:

- directly, through national private placement regimes; or
- indirectly through relationships with regulated EU firms.

SFDR does not apply to non-EU AIFMs which sell funds in the EU responding to reverse solicitation only. It is unclear whether SFDR applies to sub-threshold EU or non-EU AIFMs.

In the absence of official guidance and given that the start date for initial SFDR implementation has passed, it would be prudent for Guernsey and Jersey in-scope firms to work on the current market assumption that SFDR will apply.

Key actions for Guernsey and Jersey in-scope firms marketing into the EU

To the extent that Guernsey and Jersey firms have not already done so, they should review the scope of application of SFDR and RTS against their business operations, by assessing their level of involvement with EU regulated entities and activities or EU clients and investors. In addition, an in-scope firm should:

- **Consider its investment strategies and any sustainability risks**

If sustainability risks are relevant to the firm's investment strategies, the manner in which sustainability risks are integrated into the firm's investment decisions should be considered, together with the likely impact of sustainability on the returns of the fund and whether and how the firm's remuneration policies are consistent with the integration of sustainability risks. Disclosures to this effect should then be prepared on sustainability risk for inclusion in investor-facing documents and public-facing disclosures on the firm's website (if applicable).

If sustainability risks are not relevant to the firm's investment strategies, disclosures setting out why sustainability risks are not relevant should be included in investor-facing documents and public-facing disclosures on the firm's website (if applicable).

- **Determine whether it has any ESG products**

It should be determined whether any of the firm's funds that are marketed into the EU promote environmental or social characteristics (under Article 8 of the SFDR) or have sustainable investment or a reduction in carbon emissions as their objective (under Article

9 of the SFDR).

A firm whose funds falls within either Article 8 or Article 9 will be subject to additional sustainability disclosures under the SFDR and will be required to disclose information in accordance with the EU Taxonomy Regulation.

- **Determine whether it is required to consider the principal adverse impacts (PAIs)**

Firms are required to consider PAIs only where the firm and its subsidiaries have more than 500 employees. A firm with fewer than 500 employees may decide to consider PAIs but is under no obligation to do so.

If the firm is required to or otherwise decides to consider PAIs, disclosures describing the firm's due diligence policies with respect to PAIs should be prepared for inclusion in investor-facing documents and, public-facing disclosures on the firm's website (if applicable).

If the firm is not required to and decides not to consider PAIs, disclosures should be provided in investor-facing documents and public-facing disclosures on the firm's website (if applicable), setting out the reasons why the firm does not do so, and where relevant, information as to whether and when they intend to consider such adverse impacts.

- **Review its existing ESG-related documentation to ensure consistency**

Firms should consider if any existing documentation or agreements should be reviewed for consistency and arrange for the appropriate updates and amendments to be made.

Ogier and sustainable investment

As EU firms continue their preparation for the gradual implementation of the SFDR, and the RTS in the coming years, firms in Guernsey and Jersey should also continue to engage in the growing conversation on ESG topics happening within the EU and globally.

As well as Ogier's Sustainable Investing and Impact Funds practice, Ogier has a dedicated Sustainable Investment Consulting team which offers bespoke ESG and impact design, integration and implementation solutions that supports client to navigate ESG goals and requirements and to leverage the landscape of sustainable investing opportunities.

About Ogier

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