

Channel Islands Funds Quarterly Update Q1 2021

Newsletters - 19/04/2021

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| Pan-Channel Island developments

Increased listings on The International Stock Exchange

The International Stock Exchange (TISE) had 831 new listings during 2020. This is the second-highest annual increase in new listings since the inception of TISE and represents a 27% increase from 2019. It means there was a total of 3,162 listings at the end of December 2020, a rise of 6% year-on-year.

| Jersey developments

Jersey Private Funds (JPF) thematic review identifies areas of concern

An examination into the role of the Designated Service Provider (DSP) with respect to Jersey Private Funds (JPFs), undertaken by the Jersey Financial Services Commission (JFSC), has identified certain areas of concern. Of the six businesses examined, there were 23 findings identified relating to:

- internal systems and controls
- the JPF annual compliance return
- director services
- customer due diligence

- conflicts
- compliance reporting

These findings will inform the JFSC's review of the JPF Guide and they will be discussed in more detail at a [webinar](#) on 20 April with head of examinations Amanda Reilly, examiner Drew Livingston and policy adviser Kate Berry.

Draft versions of AML/CFT Handbooks published ahead of changes in May

Draft versions of the revised [AML/CFT Handbooks](#) are now available ahead of the amendments coming into effect on 31 May 2021. The amendments are a direct result of aligning Jersey's regulatory regime with the Financial Action Task Force (FATF) 2012 Recommendations and industry feedback on the JFSC [consultation paper](#).

One of the changes is that, with effect from 31 May 2021, the JFSC will no longer maintain a list of equivalent countries and territories. Instead, it will be for relevant persons to determine equivalence in accordance with the guidance set out in the handbooks. A country or territory may be considered to be equivalent where financial institutions and designated non-financial businesses and professions are:

- required to take measures to forestall and prevent money laundering and the financing of terrorism that are consistent with those in the FATF Recommendations;
- supervised for compliance with those requirements by a regulatory or supervisory authority.

Proposals to change fee rates for Investment Businesses

The JFSC has issued a [consultation](#) on proposals to change the fees for Investment Businesses. The amendments to fees will affect any person applying for, or having already been granted, a registration to undertake Investment Business under the Financial Services (Jersey) Law 1998 (FSJL). Responses may be made via JFL or directly to the JFSC by 22 April 2021.

Sustainable investments: follow-up consultation

The JFSC is seeking [feedback](#) on proposals to enhance various codes of practice and the Jersey Private Fund Guide to ensure that investments are not mislabelled as sustainable, a phenomenon known as “greenwashing”. The proposals aim to increase clarity around sustainable investments, enhance consumer protection and contribute towards the goal of meeting international standards. Responses must be made by 23 April 2021.

Extension of Jersey’s economic substance regime to partnerships

The Jersey Government's consultation on the proposal to extend the economic substance rules to partnerships has now closed. The proposed extension follows a recommendation by the Code of Conduct Group (Business Taxation) report of 20 November 2020, which suggested that jurisdictions which have introduced economic substance legislation should extend the requirements to partnerships by 1 July 2021. Draft legislation and guidance notes are expected imminently.

Registered Persons and financial stability

As businesses face increased financial pressure due to the COVID-19 pandemic, it is important for Registered Persons to understand the financial pressures affecting their business. Increased financial monitoring should become a key part of governance procedures. Expectations are set out in the [JFSC briefing](#) and can be summarised as follows:

- The Registered Person's financial position is considered at regular full board meetings.
- Asset values in the prevailing market conditions are regularly considered.
- The strength and documentation of any financial guarantees that support the business are regularly checked and minuted.
- Directors and Trustees review whether they are sufficiently skilled to opine on financial risks and solvency and, if not, consider seeking independent advice. Alternatively, the board should include a member who is sufficiently experienced to contribute on these matters.
- Robust procedures for the management of client assets, for reconciling movements in client assets, and for guarding against involvement in financial crime are maintained.

UK or EU rules? Jersey may need to choose, says the JFSC

According to the JFSC's chairman, Marl Hoban, the 'narrowness' of the recent trade deal between the UK and the EU might create challenges for Jersey's finance industry. Mr Hoban said the UK would likely diverge from EU regulations, to which it remains currently aligned, and this could leave Jersey with choices to make about whose rules to follow in the future.

myRegistry launch

The JFSC's new online portal 'myRegistry' was launched at the beginning of January this year, with a phased roll-out across sectors. Customers, including trust companies and fund services businesses, are now required to make submissions (for example, annual confirmation statements) to the JFSC via the portal.

Extension to submission deadline for annual confirmation statements

The transition period and the period for submitting the annual confirmation statement (which replaces the annual return) has been extended by the JFSC to 30 June 2021. Information submitted will not be made publicly available before 1 October 2021.

Data Protection (Jersey) Law 2018 (the DP(J)L) – transferring data to the UK

The DP(J)L provides for reliance on EU adequacy decisions when it comes to transferring data to a third country. After the UK left the EU, Jersey amended the DP(J)L to allow for the UK to be treated as if it were not a third country and still an EU member state until the end of 2020. This was extended on 18 November 2020 until 31 December 2021. Accordingly, Jersey organisations can continue to transfer data to the UK without any further safeguards being necessary until the end of 2021. Following the end of 2021, the treatment of the UK for data transfer purposes will depend on the adequacy decision of the European Commission.

Proposed amendments to the Electronic Communications (Jersey) Law (the EC Law)

As part of Jersey's long-term Digital Policy Framework, the Government issued a consultation paper, which closed on 8 January 2021, on proposed amendments to the EC Law to modernise and futureproof the regime. The amendments include:

- remote witnessing of signatures;
- authority to attach a signature electronically on behalf of another;
- clarifying that a signature, seal, attestation or notarisation is not to be denied legal effect, validity or enforceability because it is in electronic form, and that the EC Law applies both to documents sent to another, and documents which are simply stored after execution.

| Guernsey developments

GFSC consultation paper on green and climate-related risk

On 11 March 2021, the Guernsey Financial Services Commission (**GFSC**) published a [Spring Green consultation paper](#) and its thematic review of the Guernsey Green Fund Regime.

The consultation paper proposes additions to the Finance Sector Code of Corporate Governance (the **Finance Sector Code**) to take account of climate change considerations, as well as two minor modifications to the Guernsey Green Fund Rules.

The purpose of the minor additions to the Finance Sector Code is to underline the need for Guernsey firms to prepare for a future in which green considerations and green disclosures become part of the international standards. The GFSC wants to encourage firms to consider the

impact of climate change on their business strategies and to discuss sustainability matters in an appropriate way with clients.

The GFSC undertook the thematic review as it would like to be able to provide assurances to investors and those considering green investments. The GFSC notes that while there are some administrative areas which have room for improvement, Guernsey Green Funds appear to be invested properly in appropriate areas.

The consultation period closes on 5 May 2021.

Exit interviews for MLRO and MLCOs

Following a pilot exercise in 2020, the GFSC has made its exit interview programme for individuals who hold Money Laundering Reporting Officer and/or Money Laundering Compliance Officer roles permanent across all sectors (including the investment sector).

The pilot applied initially to the banking and fiduciary sectors and was expanded in the summer of 2020 to include the investment and legal sectors.

Cyber Security Rules and Guidance 2021

On 15 February 2021, the GFSC published its Cyber Security Rules and Guidance under The Protection of Investors (Bailiwick of Guernsey) Law, 1987; The Banking Supervision (Bailiwick of Guernsey) Law, 1994; The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000; The Insurance Business (Bailiwick of Guernsey) Law, 2002 and The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 which will ensure that the Bailiwick's regulatory regime continues to be compliant with international standards and appropriate for the Guernsey market.

The Cyber Security Rules come into operation immediately, however transitional arrangements within the Cyber Security Rules allow firms to implement changes to their internal controls to ensure compliance by 9 August 2021.

Updates to the Handbook on Countering Financial Crime and Terrorist Financing

The GFSC issued on 5 March 2021 amendments to the countries listed in Appendix C and Appendix I of the Handbook on Countering Financial Crime and Terrorist Financing (the Handbook) to reflect the Financial Action Task Force's (**FATF**) updated list of jurisdictions under increased monitoring, which includes the Cayman Islands, Burkina Faso, Morocco and Senegal.

Further amendments have been made to the Handbook to provide for:

- changes to rules and guidance in Chapters 3 and 7 on the risk-based approach and on legal

persons and legal arrangements;

- updates to Chapter 12 on international sanctions to reflect the new mechanism for the implementation of United Nations and United Kingdom sanctions in Guernsey following Brexit;
- the removal of the Bahamas from the list of jurisdictions under increased monitoring in Appendix I as the Bahamas has strengthened the effectiveness of its anti-money laundering and countering terrorist financing systems, addressed related technical deficiencies to meet the commitments in its action plan, and remedied the strategic deficiencies identified by the FATF in 2018.

Fourth quarter investment statistics

The total net asset value of Guernsey funds has increased in the last quarter of 2020 by £9.4 billion to £245.5 billion, which represents an increase of £17.9 billion over the year since 31 December 2019.

Guernsey domiciled open-ended funds experienced an increase of £2.7 billion over the year since 31 December 2019. Also Guernsey domiciled close-ended funds experienced a quarterly increase of £8.4 billion, which represents an annual increase of £15.2 billion.

Within the totals for Guernsey funds, Guernsey Green Funds held a total net asset value of £3.5 billion at the end of the quarter and non-Guernsey open-ended schemes, for which some aspect of management, administration or custody is carried out in the Bailiwick of Guernsey, had a net asset value of £37.7 billion at the end of the last quarter of 2020.

Data protection updates

The Office of the Data Protection Authority (**ODPA**) has stated that 2020's reported data breaches were down 30% on the previous year. In total, 180 personal data breaches were reported to the ODPA in 2020, whereas 259 breaches were reported in 2019.

Updated GFSC fees

Following its [consultation in the third quarter of 2020](#), the GFSC revised its fee table from 1 January 2021 pursuant to the Financial Services Commission (**Fees**) Regulations 2020. A summary of the updated fees can be found [here](#).

| Other developments

OECD calls on countries to increase efforts to deter, detect and disrupt the professionals enabling tax evasion and other

financial crimes

According to a new Organisation for Economic Co-operation and Development (OECD) report, Ending the Shell Game: Cracking down on the Professionals who enable Tax and White Collar Crimes, countries should increase efforts to better deter, detect and disrupt the activities of professionals enabling tax evasion and other financial crimes. The report outlines different strategies and actions that countries can take against professional service providers that play a key part in the planning and pursuit of criminal activity.

Outcomes of the Financial Actions Task Force (FATF) Plenary

The second Plenary of the FATF under the German Presidency of Dr Marcus Pleyer was held on 22, 24 and 25 February. In accordance with the measures adopted in October 2020 to enable FATF to continue its monitoring programme in light of the COVID-19 pandemic, the FATF has updated its statements for countries under review. The following new jurisdictions are subject to increased monitoring: Burkina Faso, the Cayman Islands, Morocco and Senegal. There is a list of jurisdictions under increased monitoring and high-risk jurisdictions subject to a call-for-action (which is unchanged from February 2020).

Sustainable finance

Sustainable finance refers to the process of taking due account of environmental, social and governance (**ESG**) considerations when making investment decisions in the financial sector. The sustainability agenda has resulted in a wave of new regulations aimed at rigorously assessing a company's ESG credentials.

Of note is the EU's sustainable finance action plan (the **Action Plan**) which, through the introduction of the Sustainable Finance Disclosure Regulations (**SFDR**) and the EU Taxonomy Regulation, sets out a framework for identifying, quantifying and reporting on the sustainability of investments. The SFDR came into force on 10 March 2021.

All managers marketing a fund into the EU will be required to comply with the relevant parts of the regulations to some extent, with disclosures and statements of compliance required, regardless of whether the fund in question has sustainability as an objective.

Over the next 12 to 24 months, managers who wish to capitalise on an increasing investor appetite for ESG will need to justify their and their fund's ESG credentials by reference to prescriptive qualifying criteria. The introduction of standardised disclosures and templated reporting means that investors will be able to make comparisons between the ESG and sustainability-related performance of funds and their managers.

A link to our briefing relating to the application of the SFDR to Guernsey and Jersey firms can be found [here](#).

Public consultation on the review of the Alternative Investment Fund Managers Directive (AIFMD)

In view of the European Commission's continuous efforts to forge a Capital Markets Union, it launched a [consultation](#) to seek views on how to achieve a more efficiently functioning EU Alternative Investment Fund market as a part of a stable financial system.

On 28 January, the Association of Real Estate Funds submitted its [response](#) and claimed the AIFMD's effectiveness has, to a degree, been impaired by national legislation or existing market practice.

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