

Channel Islands Funds Quarterly Update: Q2 2021

Newsletters - 26/07/2021

| Pan-Channel Islands developments

Economic substance regime now extended to partnerships

As of 1 July 2021, the economic substance legislation in Jersey and Guernsey will apply to newly-formed partnerships. For partnerships existing prior to this change, there will be a six-month transition period to 1 January 2022.

The extension of the rules to partnerships is part of the Channel Islands' ongoing political commitment to the EU Code of Conduct Group.

The substance requirements apply to resident partnerships (including incorporated limited partnerships, limited liability partnerships, limited partnerships, separate limited partnerships, Jersey-resident foreign limited partnerships, Guernsey-resident foreign limited partnerships, and general partnerships) that carry on certain specified geographically mobile activities, including fund management business, finance and leasing business and holding partnership business.

All resident partnerships are in scope of the regulations, unless they are specifically excluded. The following are those partnerships that are excluded:

- a. Wholly local partners exemption - where all the partners in a partnership are individuals subject to income tax in respectively, Guernsey or Jersey.
- b. Wholly domestic exemption - provided that the partnership is not part of a multinational group, where the partnership does not undertake business activities outside of respectively, Guernsey or Jersey.
- c. Place of effective management exemption - where the place of effective management is in

another jurisdiction.

- d. Fund exemption - collective investment schemes regulated by the Guernsey Financial Services Commission (the **Commission**) under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (as amended) (the **POI Law**); collective investment funds regulated by the Jersey Financial Services Commission (**JFSC**) under the Collective Investment Funds (Jersey) Law 1988 (the **CIF Law**) and private funds which do not make an offer to the public within the meaning of the CIF Law.

For further details, please see our briefings for [Jersey](#) and [Guernsey](#).

The International Stock Exchange reports a record number of Q1 listings

The International Stock Exchange (**TISE**) reported that there were 225 newly listed securities on TISE during the first three months of 2021, which is more than any other quarter since the incorporation of TISE in 1998.

The total number of listed securities on TISE was 3,235 as at 31 March 2021.

Jersey developments

Self-managed funds must satisfy the economic substance test – Taxation (Companies – Economic Substance) (Amendment No. 2) (Jersey) Law 2021

The new Law amends the Taxation (Companies – Economic Substance) (Jersey) Law 2019 by inserting a requirement that a self-managed fund must satisfy the economic substance test. This Law was registered in the Royal Court on Friday 28 May 2021 and came into force on Friday 4 June 2021.

We recommend all self-managed funds re-consider and record their compliance with the economic substance rules.

Changes made to Funds Business fee rates

The Jersey Financial Services Commission (**JFSC**) has published a feedback paper on its consultation on proposals to increase Funds Business fees. Having carefully considered the responses received, the JFSC have concluded that following changes will be made, effective as of 1 July 2021.

- annual fees will increase by 2.0%; and
- a new £400 alteration fee is to be introduced for adding amending, or removing licence

conditions, or licence classes.

Disclosure requirements for sustainable investment aim to combat greenwashing

The JFSC has published a feedback paper (available [here](#)) on its consultation on disclosure requirements related to sustainable investments. The definition of a sustainable investment is one which contributes to either an environmental or social objective (**Sustainable Investment**). The paper has sought to address the risk of investments being mislabelled as sustainable or marketing practices which cause investments to appear more environmentally friendly and socially focussed than they are, a practice known as "greenwashing".

The paper also sets out specific requirements related to funds and those related to registered persons undertaking Investment Business.

Funds

When a fund is marketed on the basis of investing in a Sustainable Investment as part of its investment objective, it must disclose (via website or pre contractual document/prospectus or documents in which the terms of investing in the fund are contained such as a subscription agreement) all material information in relation to the Sustainable Investment strategy and objectives; including but not limited to:

- alignment with any specific taxonomy or where there is no alignment to a specific taxonomy a statement to that effect;
- the proportion of investments that are sustainable;
- the basis on which due diligence, benchmarking, and performance measurement and reporting, are likely to be conducted; and
- any limitations to methodologies and data.

As far as fund services businesses are concerned, the obligation to ensure that a fund complies with the disclosure requirements will only apply:

- when the Registered person cannot evidence that the fund has complied with the requirements imposed on the fund under the relevant code of practice; and
- to Registered persons which are the 'governing body' of the fund (self-managed funds, general partners or trustees/managing trustees) or which otherwise accept responsibility for the document in which the disclosures are made, in accordance with Jersey regulatory requirements, in that such persons have responsibility around the investment objective and marketing of the fund.

Registered persons will be required to notify the JFSC in writing within five business days of becoming aware that the fund has not made the requisite disclosures in relation to the sustainable investment strategy and objectives of the fund.

The effective date for new funds is 15 July 2021, with a six-month transition for funds existing prior to 15 July 2021 (ie 17 January 2022).

Investment Business

When a registered person provides investment advice to its client in relation to a fund that is marketed on the basis of investing in a Sustainable Investment as part of its investment objective, the registered person must inform, and make available to the client, the appropriate disclosure information in relation to the sustainable investment strategy and objectives of the fund. If no such information is available the client must be informed of that fact.

There is effectively a six-month transition period with an effective date of 17 January 2022.

Please see our [briefing](#) for more information on this update.

Duty of supervisory body to use a risk-based approach

The Proceeds of Crime (Supervisory Bodies) (Amendment) (Jersey) Law 202-, if passed, will insert a new Article 8A (duty of supervisory body to use a risk-based approach) of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (**the principal Law**) to:

- provide that a supervisory body must use a risk-based approach in performance of its duties under the principal Law;
- insert a definition of “risk-based approach” as determining the scrutiny that a supervised person or supervised business requires on the basis of the following factors:
 - money laundering and terrorist financing risks associated with the supervised person or business;
 - policies, internal controls and procedures associated with the supervised person or business;
 - money laundering or terrorist financing risks present in the jurisdiction; and
 - any other characteristic considered to be relevant by the supervisory body;
- provide that a supervisory body that devises a risk profile for a supervised person or business must take account of FATF recommendations.

Investment in lawful cannabis industry is now permitted

New legislation will allow the use of Jersey vehicles in what has in recent years become a

dynamic and fast-growing industry.

On 30 June 2021 the States made the Proceeds of Crime (Amendment of Law) (No. 2) (Jersey) Regulations 2021 (**the Regulations**). The Regulations have amended the definition of criminal conduct in Article 1(1) in the Proceeds of Crime (Jersey) Law 1999 to provide that the production, supply, use, export or import of cannabis or any of its derivatives is no longer considered criminal conduct provided that:

- a. it is lawful where and when it occurs; and
- b. it occurs in a jurisdiction outside of Jersey that the Minister for External Relations and Financial Services may specify by order.

The Proceeds of Crime (Cannabis Exemption – List of Jurisdictions) (Jersey) Order 2021 (**the Order**) specifies a list of countries based on the outcomes of mutual evaluation reports carried out against the international standards concerning money laundering, terrorist financing and financing of proliferation, so as to ensure that Jersey only deals in proceeds where the origin of those proceeds is in a country which applies suitably equivalent money laundering controls to Jersey.

Both the Regulations and the Order came into force on 7 July 2021. Read our full briefing [here](#).

First quarter fund statistics

The net asset value of funds serviced in Jersey stood at £410 billion as at the end of Q1 2021, which represents a jump of approximately £50 billion from £361 billion as at 31 March 2020, but that is because the statistics collected and published by the JFSC now include the increasingly popular Jersey Private Fund (and other COBO only funds), meaning these figures show the true state of play of the funds industry in Jersey.

There are 588 collective investment/public funds in Jersey and 157 COBO only/private funds representing NAVs of £396.5 billion and £16.5 billion respectively.

| Guernsey developments

Revisions to Private Investment Fund rules

Following a successful public consultation, the Commission has amended the rules relating to Private Investment Funds (**PIF**) in Guernsey.

The public consultation process showed there was strong support for a PIF model without the attached Protection of Investors Law, 1987 (**POI**) licensed manager, giving the island's fund industry more flexibility while maintaining protection for investors.

The current 'first' path approach to registering a PIF will be retained which remains available to those wishing to raise money from broader categories of investor. To use the 'second' path, all investors will have to meet qualifying investor criteria which are designed to protect more vulnerable investors. At the time of application, the POI licensed fund administrator will be required to provide confirmations equivalent to those currently provided by a fund administrator in respect of any Qualified Investor Fund application.

The 'third' path will enable a PIF to be created as a bespoke private wealth structure requiring a family relationship between investors. The Commission confirmed that there will be no requirement to appoint a POI licensed fund manager and at the time of application the POI licensed fund administrator will need to provide confirmation that effective procedures are in place to ensure that the PIF is restricted to only eligible family-related investors.

The PIF Rules and Guidance took effect from 20 April 2021 and can be found [here](#).

Please see our [briefing](#) and [additional resources](#) on the new PIF Rules for further details.

Three new consultation papers on the Revision of Laws Project

On 21 April 2021, the Commission issued three new consultation papers in connection with the Revision of Laws Project.

The first paper deals with revision to regulations and rules made under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 (the **New Fiduciaries Law**). It is proposed that the Fiduciary Rules, 2020 will be replaced with revised rules which largely mirror the current rules but will also make new provisions, as required under the New Fiduciaries Law, for the re-categorisation of full fiduciary licensees as primary or secondary licensees. It is also proposed that advertising restrictions applied to personal fiduciary licensees will be repealed and such activity brought under the applicable provisions of the Fiduciary Rules.

The second paper proposes making new rules and guidance under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 for the notification to the Commission of certain activity which is ancillary to controlled investment business. At present such activity requires the granting of a discretionary exemption under the Fiduciary regime. The Regulation of Fiduciaries, Administration and Company Directors etc (Bailiwick of Guernsey) Law, 2020 introduces a new statutory exemption from licensing for such activity where this has been notified to the Commission under the POI regime. The proposal will introduce a more streamlined approach with consideration of this investment-related activity under the more appropriate umbrella of the POI regime.

The third paper relates to the proposed minor amendments necessary to the Commission's rules due to the revised supervisory laws arising from the Revision of Laws project. These draft

Statutory Instruments do not implement policy change but the Commission welcomes responses to the consultation paper nonetheless.

The closing date for responses to the consultation papers was 17 June 2021.

De-regulation of Non-Guernsey Scheme regime

On 11 May 2021, the Commission announced that, following consultation with the industry, it has revoked the Non-Guernsey Scheme regime and the associated rules.

In practice this will mean that licensee will no longer be required to notify the Commission of, and seek prior approval for, a proposal to carry on the activities of management, administration or custody in connection with a specific non-Guernsey collective investments scheme. There will however continue to be a requirement that such activities, when conducted by way of business in or from within the Bailiwick, are conducted by persons licensed under the POI Law.

The Commission will continue to monitor the type of investment business undertaken by regulated firms and the risks they pose to the Commission's core functions, by extending the annual reporting by POI licensees to include certain information on activities undertaken in respect of investment assets serviced in Guernsey.

First quarter investment statistics

The total net asset value of Guernsey funds has increased in the first quarter of 2021 by £18.1 billion to £263.6 billion, which represents an increase of £30.4 billion over the year since 31 March 2020.

Guernsey domiciled open-ended funds experience an increase of £3.3 billion over the year since 31 March 2020. Also Guernsey closed-ended sector increased over the quarter by £19.1 billion to £215.6 billion, which represents an increase of £27.1 billion.

Within the totals for Guernsey Funds, Guernsey Green Funds held a total net asset value of £3.8 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 £36.1 billion at the end of the first quarter 2021.

Finance sector code of corporate governance

On 10 June 2021, as a result of the Commission's Spring Green Consultation, the Commission published the amended Finance Sector Code of Corporate Governance (the **Code**) which asks boards of director of companies to consider the impact of climate change on their strategy and risk profile and, where they judge is appropriate, make climate change related disclosures.

The Commission has received broad support from the industry in respect of the Code and its

aim in amending the Code is to ensure firms within the Bailiwick of Guernsey are prepared to engaged with climate change issues in a way that is proportionate to the nature of their business.

The Code will come into effect for financial years starting from 1 October 2021.

Please see our [briefing](#) on these changes for further details.

Commission's 2020 annual report

The Commission Annual Report and Accounts for 2020 (the **Report**) was published on 13 May 2021 (see [here](#)), providing a comprehensive overview of its activities of the last year, together with a detailed analysis of the income it received, the expenditure it incurred and its overall financial position moving into 2020.

Phishing attempts

On 9 April 2021, the Commission issued a warning to the industry advising of an increase in the number of phishing attempts being aimed at local businesses.

Businesses are reminded to follow the guidance available to them through the Commission's Cyber Rules and Guidance 2021, and to ensure that each business has appropriate cyber security software in place to prevent these types of attacks, implements all IT system updates necessary, all staff exercise caution and diligence when it comes to suspicious content and to notify the Commission if a significant cyber security event occurs.

Data protection updates

The Office of the Data Protection Authority (**ODPA**) published [guidance](#) on how businesses should navigate the use of people's personal data in respect of vaccination against coronavirus, including guidance on collecting employee's vaccination status and steps that should be taken in order to safeguard that data in line with the Data Protection (Guernsey) Law, 2017.

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