

Channel Islands Funds Quarterly Update: Q3 2021

Newsletters - 20/10/2021

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| Pan-Channel Islands developments

Economic substance: scope extended to partnerships

The Income Tax (Substance Requirements) (Implementation) Regulations, 2021 came into effect in Guernsey on 30 June 2021 and The Taxation (Partnerships – Economic Substance) (Jersey) Law 2021 came into force in Jersey on 8 October 2021, in both cases widening the scope of the existing legislation in respect of economic substance to include partnerships.

Transitional arrangements provide for an effective date of 1 July 2021 and a six-month transition period to 1 January 2022 for partnerships established before 1 July 2021.

Please see our [Jersey](#) and [Guernsey](#) briefings for more information.

The International Stock Exchange launches new sustainable division – TISE Sustainable

The International Stock Exchange (**TISE**) is now a Partner Exchange of the United Nation's Sustainable Stock Exchanges (**SSE**) initiative. TISE Sustainable, launched on 5 July 2021, was established to provide a comprehensive and reputable market segment, which enables the flow of capital into investments that promote environmental, social or sustainable activities. Its aim is to help connect issuers and investors to facilitate the flow of sustainable capital.

All issuers/securities are assessed against internationally recognised sustainability standards.

To qualify for admission: either

- the issuer's business, or that of its wider group, or the use of proceeds raised by the issuance of a security, has to be verified as having an environmental, social or sustainable purpose by an independent party against a recognised framework eg certification by the Climate Bonds Initiative; and/or
- the issuer's business, or that of its wider group, has to be positively rated by an independent party eg rated Prime by ISS ESG Corporate Rating.

An application for admission to the TISE Sustainable market segment can be made at the same time as an application to list.

TISE - new Listing Rules, Membership Rules and fees

TISE's Authority has published its updated Listing Rules, which came into effect on Monday 2 August 2021. The material changes are:

- the creation of a separate rulebooks for debt and equities securities and the establishment of a dedicated Qualified Investor Bond Market (**QIBM**);
- a TISEA commitment to conduct an initial review of listing applications within three business days of the first submission and within one business day of subsequent submission(s);
- the initial application fee, first annual fee and formal notice fee or lifetime fee invoice (as applicable) must be settled by 12 noon (GMT) on the required application approval/listing date; and
- new disclosure obligations checklists to be completed by listing agents/sponsors.

Read our full briefing [here](#).

New Membership Rules came into effect on Monday 19 July 2021. They reorganised the categories of membership to align with the new Listing Rules (Listing Members who act as Listing Agent for the QIBM and/or Equity Market and Trading Members) and reassigned existing members into those categories. For Listing Members, Annual Membership Fees will be gradually phased out from January 2022 based on TISE listing activity.

Jersey developments

Pipeline of consultations, legislative updates and revised policies and guidance to end of 2021

The JFSC has provided an outline of the more significant work streams which will be its focus through to the end of the year.

Its aim is to enhance and simplify Jersey's regulatory framework and it will work with industry

and the Government of Jersey to develop legislation that will ensure Jersey's regulatory regime continues to meet international standards.

Such changes will include:

- an update to the JFSC's Outsourcing policy to reflect industry feedback;
- a consultation on consolidating the AML/CFT handbook including guidance on E-ID, which can now be found [here](#);
- a consultation on reducing the range of exemptions from AML/CFT oversight; and
- a new regulatory regime for virtual assets and their service providers.

Updates to the Sound Business Practice Policy

The Sound Business Practice Policy (**SBPP**) explains the JFSC's approach to granting consent under the Control of Borrowing (Jersey) Order 1958 (**COBO**), which essentially gives permission to do business in Jersey.

Several "sensitive activities" are listed in the SBPP and Table 2 of the SBPP lists activities that pose a potential risk to the reputation of Jersey.

To obtain a consent pursuant to COBO when the proposed business conducts a sensitive activity (including a Table 2 activity), the JFSC requires further application details, including, for example, the steps the business will take to address risk associated with the activities. Longer approval times apply for an application by a business to conduct a sensitive activity.

Trading carbon credits (a carbon credit is a certificate or permit representing the holder's right to emit one tonne of carbon dioxide or other greenhouse gases) is now included as an example of where goods or services are not subject to consumer protection or pose a risk of fraud.

The JFSC recognises the legitimate role carbon credits can play in tackling climate change and therefore will permit activities where clear and appropriate steps have been taken to minimise the risk of consumer detriment, including the appointment of a Jersey Trust Company Business to administer the scheme if the majority ultimate beneficial owner is not resident in Jersey.

Cannabis activities were already listed as a sensitive activity, but the JFSC has changed the policy to make it clearer that it is more likely to grant consent if the activities are legal when and where they take place and if they take place in a jurisdiction that the Government of Jersey has prescribed.

This is in line with the new regulations amending the Proceeds of Crime (Jersey) Law 1999 that came into force on 7 July 2021, which clarify when proceeds from investments should not be treated as proceeds of crime. Essentially, the new regulations recognise that cannabis is not

illegal (whether medicinally or recreationally) in certain jurisdictions and, consequently, those wishing to invest in cannabis activities taking place in one or more of the prescribed jurisdictions will not be receiving the proceeds of crime when they receive returns on their investment. Please see our [briefing](#) for more information.

New Registry search now live

The new Registry search is now live, allowing for:

- searching for corporate and legal entities;
- ordering copies of publicly available documents; and
- ordering Certificates of Good Standing.

The new Registry search and guidance produced by the JFSC on how to use the search engine can be found [here](#).

Beneficial Ownership Guidance updated by JFSC

The JFSC has recently updated its beneficial ownership guidance, with a focus on two key updates:

- section 1 now explains the definition of "beneficial owner," and how this information is recorded in myRegistry;
- section 5 clarifies that, in relation to companies owned by a trust, there is no requirement to record the settlor as a controller unless the settlor has retained powers of control. However, the JFSC will still collect details on settlors, instigators, and arrangers as part of the wider information used to assess activities and structure.

The beneficial ownership guidance can be found [here](#).

Notifications to the JFSC about principal and key persons – a reminder

Businesses are being reminded that the JFSC needs to be notified when there is a new appointment of a principal or key person and, equally, when that person stops working for the business. The reminder states that while it is the principal or key person's responsibility to make this notification by ensuring they update their personal information with the JFSC at the start and end of their appointment, their employer also has an obligation to provide information on the date of appointment, when they have ceased to act, and if they did not proceed with their appointment.

Individuals should use the myprofile link on the JFSC website to make any amendments to their

personal information or provide appointment or ceasing to act dates. Businesses should notify the JFSC in writing or via email as to a new appointment. When an individual ceases to act, the business should notify the JFSC through completion of the "notification of ceasing to act as a principal person/ key person" form within one month of the individual's last working day.

Second quarter fund statistics show private equity and alternatives are thriving in Jersey

Recently published quarterly statistics for the period ending 30 June 2021 show that the value of regulated funds under administration in Jersey grew by 15% to £436.3 billion in the first half of 2021. Please see our [briefing](#) here for a full analysis.

Guernsey developments

The Revision of Regulatory Laws Project

Guernsey's long-term project to revise and restate its suite of regulatory laws has been completed and the resulting laws come into effect on 1 November 2021.

The process, which commenced on 10 November 2014 with the publication by the GFSC of a discussion paper, has culminated in a new Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 (**Enforcement Law**), in which the powers of the GFSC in relation to enforcement, sanctions and penalties (criminal, civil and administrative) have been consolidated from the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 and the other regulatory laws. The Enforcement Law also houses the market abuse provisions previously in the Protection of Investors (Bailiwick of Guernsey) Law, 1987. In addition, the principal regulatory laws themselves have been amended, and in some cases repealed and replaced, as follows:

The Protection of Investors (Bailiwick of Guernsey) Law, 1987	The Protection of Investors (Bailiwick of Guernsey) Law, 2020 (New POI Law)
	The Regulation of Fiduciaries, Administration Businesses and Company

The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000	Directors, etc (Bailiwick of Guernsey) Law, 2020 (New Fid Law)
The Banking Supervision (Bailiwick of Guernsey) Law, 2002	The Banking Supervision (Bailiwick of Guernsey) Law, 2020
Insurance Business (Bailiwick of Guernsey) Law, 2002	Insurance Business (Amendment) Ordinance, 2020
Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002	Insurance Managers and Insurance Intermediaries (Amendment) Ordinance, 2020

The principal objectives of the amendments were described by the Policy and Resources Committee as follows:

- a. to ensure compliance with international and EU standards, including the MiFID regime;
- b. to create efficiencies and ensure effective supervision;
- c. to eliminate unjustified inconsistencies by ensuring consistency of text, process and procedure across the regulatory enforcement field, except to the extent necessary to take account of the differing supervisory needs of the individual financial sectors; and
- d. to support industry and “future proof” the legislative regime.

For further details in relation to the above changes and how they impact POI and Fid Law Licensees, as well as a summary of the new Enforcement Law, please see our [briefing](#).

Green Fund Rules

On 6 July 2021, the Guernsey Green Fund (Amendment) Rules, 2021 came into force, and amended the existing Guernsey Green Fund Rules, 2018 (**the Green Fund Rules**). The new provisions provide for two helpful changes to the Green Fund Rules, which should together reduce the administrative burden on designated administrators in respect of closed-ended green funds and allow for greater flexibility in the making of certain disclosures for listed green funds.

Section 6 of the Green Fund Rules has been amended to provide that designated administrators are required to monitor the closed-ended Green Funds they administer against the applicable notified green criteria on a quarterly basis rather than on a monthly basis. The obligation to monitor Green Funds against applicable notified green criteria remains on a monthly basis for open ended funds.

Section 8 of the Green Fund Rules has been amended to exempt a fund from the obligation to include certain disclosures in its prospectus where that fund is listed on a recognised stock exchange and has made commensurate disclosures by way of a stock exchange announcement.

Removal of restriction on the use of Incorporated Cell Companies by non-financial services businesses

The Companies (Incorporated Cell Companies) (Prescribed Classes) Regulations, 2021 came into force on 2 July 2021. A non-financial services business wishing to incorporate as an Incorporated Cell Company (**ICC**) had previously been required to be administered by a licensed person. The new regulations remove this requirement where the ICC is to be a non-financial services business. It is expected, therefore, that this will assist non-financial service businesses in the reduction of establishment and ongoing costs for such businesses that wish to establish themselves in Guernsey.

Data protection updates

The Office of the Data Protection Authority (**ODPA**) has published a [technical update](#) in connection with the exemptions set out under Schedule 8 of the Data Protection (Bailiwick of Guernsey) Law, 2017, which, in certain limited circumstances, remove or reduce particular obligations of data processors and controllers in relation to data subject rights. The update provides clarification and explanatory notes with regard to how and when to apply such exemptions.

Second quarter fund statistics show continued growth in the Guernsey funds sector

The total net asset value of Guernsey funds has increased in the second quarter of 2021 by £9 billion to £272.6 billion, which represents an increase of £45.8 billion over the year since 30 June 2020.

Guernsey domiciled open-ended funds experienced an increase of £2 billion over the quarter. Also, the Guernsey closed-ended sector increased over the quarter by £7 billion to £222.6 billion, which represents an increase of £43.6 billion since 30 June 2020.

Within the totals for Guernsey funds, Guernsey Green Funds held a total net asset value of £3.9 billion at the end of the quarter.

Other developments

European Commission publishes Q&A on the EU Sustainable Finance Disclosure Regulation

The Q&A can be found [here](#) and provides further guidance on the application of the EU SFDR and the implications for non-EU fund managers.

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

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Regulatory information can be found under [Legal Notice](#)

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