

Channel Islands Funds Quarterly Update: Q4 2021

Newsletters - 02/02/2022

| Pan-Channel Islands developments

Economic substance: partnership guidance notes published

The governments of Guernsey, Jersey and the Isle of Man have published joint guidance notes on the scope and application of formal economic substance requirements to partnerships. The relevant legislation for Guernsey is the Income Tax (substance Requirements) (Implementation) Regulations, 2021 and, for Jersey, the Taxation (Partnerships – Economic Substance) (Jersey) Law 2021.

The economic substance test set out in the legislation must be met from 1 July 2021 for partnerships established before that date, and from 1 January 2022 for all other partnerships. Funds structured as partnerships are not required to meet the test.

The guidance notes cover, among other things, identifying the governing body and "place of effective management" of the partnership, and the exemptions where partnerships carry on solely domestic activities or where all the partners are individuals subject to income tax in the respective island.

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

TISE sets new record with 1,111 new listings in 2021

The International Stock Exchange (TISE) listed a record 1,111 new securities in 2021 – a 33.7% increase on the 831 securities listed during 2020. It surpasses its previous record of 865 set in 2018. This growth takes the total number of listings on TISE to 3,669 at the end of 2021, a rise of 16% year on year.

Consultations and updates to AML/CFT handbooks and exemptions

Towards the end of 2021, the [JFSC announced a pipeline of consultations](#), legislative updates and revised policies and guidance with the aim of enhancing and simplifying Jersey's regulatory framework to ensure Jersey's regulatory regime continues to meet international standards.

One such consultation, issued in December 2021, concerned AML/CFT scope exemptions with a view to aligning Jersey's AML/CFT registration regime with international standards set by the Financial Action Task Force (**FATF**).

The proposals will expand the list of activities giving rise to AML/CFT obligations by (i) including the latest FATF descriptions of financial institutions, designated non-financial businesses and professions and virtual asset service providers, and (ii) removing various exemptions which currently exempt entities from AML/CFT obligations.

The proposals do not affect the exemptions set out in the Financial Services (Jersey) Law 1998, however, entities, including many functionaries of private funds and non-fund structures and other SPVs, will need to consider whether the changes will impose AML/CFT obligations on them.

[Read the joint JFSC and Government initiative consultation](#), The consultation closed on 17 January 2022.

In Guernsey, the Guernsey Financial Services Commission (**GFSC**) has updated Appendix 1 of the AML/CFT handbook as a result of the FATF's announcement that it has removed Botswana and Mauritius from its list of jurisdictions under increased monitoring, but added Jordan, Mali and Turkey.

Jersey developments

Amendments to the Limited Partnerships (Jersey) Law 1994

Draft amendments to the Limited Partnerships (Jersey) Law 1994 (the **LP Law**) have been published for feedback. The Limited Partnerships (Amendment No. 2) (Jersey) Law 202- aims to modernise the LP Law, resolving certain ambiguities and adding flexibility, making Jersey's limited partnership statute a "best in class" among competitor jurisdictions.

The key changes are expected to include:

- Extending the list of "safe harbour" activities which a limited partner may undertake without being deemed to participate in management of the partnership (thus risking its limited liability)
- Clarifying the process for the winding up and dissolution of a limited partnership

- Enabling a limited partnership agreement to govern the access which limited partners may have to partnership records
- Enhancing reporting obligations, with powers for the Registrar to strike off non-compliant partnerships (with a new reinstatement process also being introduced)

The final date for feedback was 21 January 2022.

The continuing rise of Jersey Private Funds shown in third quarter fund statistics

The number of Jersey Private Funds has risen past 500, according to the latest quarterly statistics published by Jersey Finance. The September 2021 data shows 502 registered since the regime was introduced in 2017, with a 38% increase over the past year alone.

Elsewhere in the statistics, the aggregate NAV of regulated collective investment funds increased by £74.6 billion (20.4%) year on year, to £440.1 billion. These figures exclude Jersey Private Funds and qualifying segregated management accounts, the latter accounting for a further £1.3 billion in assets under management.

The largest single asset class is still venture capital/private equity, although the quarter saw increases in the NAV of funds pursuing real estate, hedge and other alternative strategies.

Read our [briefing on the continued success of Jersey Private Funds](#).

New prospectus regime for corporate issuers

The Companies (Jersey) Law 1991 (the **Companies Law**) imposes requirements on securities issuers where they make an offer constituting a "prospectus" for the purposes of the law, including requiring JFSC consent to the offer, imposing content requirements, and deeming the issuer a public company. Note that these requirements **do not apply** to corporate collective investment funds, which are carved out by the Companies (General Provisions) (Jersey) Order 2002.

The Companies (Amendment of Law) (No. 2) (Jersey) Order 2021 came into force on 19 October 2021, amending the definition of "prospectus" to align more closely with market expectations. Issuers may now be exempt from Companies Law prospectus requirements on a number of grounds, including status of investors, minimum investment amounts, and making an offer to no more than 50 persons in Jersey or 150 elsewhere.

Read our [detailed briefing on the changes to the Jersey Securities Issuing Vehicles](#).

Amendments to the Electronic Communications (Jersey) Law 2000

Further modernising amendments are to be made to the Electronic Communications (Jersey) Law 2000 (subject to Privy Council approval) to cover digital technologies and remote working behaviours, and are expected to come into force in Q1 2022.

In particular, the revised law will confirm how remote witnessing via audio-visual link may be conducted where signatures are required by law to be witnessed. It will also enable a signatory to authorise another person (such as their assistant) to attach the signatory's electronic signature on their behalf.

Read our [Snapshot: welcome updates to Electronic Communications Law](#)

New Financial Services policy framework launched

The Government of Jersey has published an updated policy framework for financial services. This seeks to build on the strengths and successes of the industry over the past 60 years, and targets a future marked by digital transformation, continued compliance with global standards, and leadership in sustainable finance.

The policy highlights Jersey's strengths as a politically stable jurisdiction and economy with a government that supports the financial services industry and notes that Jersey is recognised as a leading jurisdiction for private equity and real estate funds. Jersey holds over £410 billion net asset value of regulated funds.

At the core of the framework are ten strategic priorities:

- Maintaining and developing private wealth, funds, corporate and capital markets and banking as the four pillars of the industry
- Enabling Jersey to become a leading international finance centre supporting the drive to carbon net zero
- Harnessing opportunities created by fintech and digitalisation
- Maintaining an attractive and agile operating environment for successful businesses and skilled professionals
- Maintaining strong adherence to international standards
- Reviewing and refreshing Jersey's strategy to combat financial crime
- Enhancing Jersey's profile internationally
- Growing and deepening Jersey's footprint in new and existing markets
- Delivering strong and effective co-operation among stakeholders (government, regulator and industry)

- Deepening and broadening the skills and expertise of Jersey's workforce

Read the [new policy framework for Jersey financial services industry on gov.je](#).

Government responds to civil financial penalties consultation

During 2021, the Government of Jersey consulted on extending the Civil Financial Penalties regime to designated non-financial businesses (such as lawyers, accountants and estate agents) and to bring directors and senior management of businesses into scope, meaning these individuals could face fines personally.

Certain key changes have been made in light of comments raised:

- Money Laundering Compliance Officers and Compliance Officers will not be subject to the CFP regime, unless they also perform a senior management function
- Individuals will not be subject to penalty after the expiry of six years from the date the relevant contravention came to the JFSC's attention. There is no such limit for legal persons
- Penalties levied on a legal person will be calculated based on that entity's turnover rather than income, as proposed in the consultation, but only on the turnover of the entity penalised and not its entire group (unless in the context of a trust company business forming part of an affiliation)

JFSC announces focus of 2022 thematic reviews

The JFSC's thematic examinations of regulated businesses in 2022 will focus on the following:

- AML/CFT business risk assessments and strategy
- The role of the MLCO
- Beneficial ownership and control

Read the JFSC's announcement, which provides more detail on the themes and process.

[Thematic examination programme 2022](#)

| Guernsey developments

Third quarter fund statistics show total net asset values increased by £53.8 billion over a year

According to the Guernsey Financial Services Commission (**GFSC**), the total net asset value of Guernsey funds increased in Q3 by £17.4 billion (6.4%) to £290 billion. Over the year, total net

asset values increased by £53.8 billion (22.8%).

Within these totals, Guernsey domiciled open-ended funds increased over Q3 by £2.2 billion (4.4%) to £52.2 billion. This represents an increase of £4.2 billion (8.8%) in the past year. The Guernsey closed-ended sector increased over the quarter by £15.2 billion (6.8%) to £237.8 billion. This represents an increase of £49.6 billion (26.4%) in the past year.

Guernsey Green Funds held a total net asset value of £4.2 billion at the end of Q3.

Guernsey's "future-proof" new and revised regulatory laws come into force

The new and amended regulatory laws relating to the GFSC's Revision of Laws Project came into effect on 1 November 2021. The new and amended regulatory laws are intended to "future-proof" the Bailiwick's regulatory and supervisory regime by including enabling provisions that allow the jurisdiction to respond quickly and appropriately to the pace of change in the global finance industry. The suite of regulatory rules and guidance accompanying and supplementing the new laws was also updated effective from 1 November. Read more about the changes [Guernsey's Revision of Regulatory Laws Project completes.](#)

New blockchain fund launches as registered fund in Guernsey

In a significant development for Guernsey as a location for blockchain technology focussed funds, Ogier recently acted as lead counsel to Reference Capital SA on the formation and registration of Reference Blockchain Technology I LP (**Reference Fund**) in Guernsey as a registered collective investment scheme (**RCIS**) and on its first closing. We expect to see blockchain technology applications continuing to feature more frequently as an investment asset going forward.

Read how [Ogier in Guernsey advises on new blockchain fund.](#)

Consultation on Ancillary Vehicles remains ongoing

The GFSC is conducting further data collection and analysis following feedback to its Consultation Paper on Ancillary Vehicles. Therefore, since the new and amended regulatory laws came into effect on 1 November 2021, the notification regime for Ancillary Vehicles and the associated exemption under The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 will not be activated. However, exemption provisions equivalent to those available under The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 will continue to be available.

Office of the Data Protection Authority approves EU standard

contractual clauses

The Office of the Data Protection Authority (**ODPA**) has approved the new European Union standard contractual clauses (**SCCs**) for use by Guernsey controllers and processors. The new SCCs, in respect of international transfers, reflect the changes to the European data protection legislation, and apply with regard to the international transfer of personal data to "third countries" that have not yet adopted data protection legislation which is equivalent to the European Union's Data Protection Regulation.

The transitional period for the new SCCs means that all Guernsey controllers and processors must have stopped using the existing SCCs in new contracts by 27 September 2021, and all existing contracts that use the existing SCCs must use the new SCCs by 27 December 2022.

Other developments

AIFMD II – proposed new directive published

The European Commission has published the conclusions of its review on the scope and functioning of the Alternative Investment Fund Managers Directive (**AIFMD**) and a proposed new directive, "AIFMD II" (which, if approved, would need to be implemented by Member States within 24 months).

The Commission's conclusion was that the AIFMD's objectives have mostly been met. As such, the proposed amendments in AIFMD II are targeted to certain specific areas, of which the following will affect managers operating in the Channel Islands:

- Market access for non-EU AIFMs and AIFs – managers or fund vehicles located in third countries which are on the EU's lists of (i) high-risk third countries or (ii) non-cooperative tax jurisdictions will not be able to market to European investors. The relevant third countries must also have signed an agreement with each Member State in which the fund is to be marketed which fully complies with the OECD's Model Tax Convention on Income and Capital and ensures an effective exchange of information on tax matters.
- NPPRs to remain for now – the proposals do not address the extension of the pan-European marketing "passport" to third parties, nor any attempt to standardise the national private placement regimes (**NPPRs**) under which non-EU AIFs are marketed. Non-EU managers and their advisers are, of course, adept at navigating the existing NPPR regimes, which now look set to remain for the foreseeable future.
- Delegation by EU AIFMs – more stringent requirements are proposed where EU AIFMs delegate to third party service providers, including Channel Island firms. In particular, the scope of "delegation" would be widened to include all services listed in Annex I to the AIFMD itself (including administration services such as fund management accounting) and

ancillary services such as investment advice. The EU AIFM delegating these activities would be subject to more detailed reporting requirements.

- Additional investor disclosures – the disclosures to be provided under Article 23 of the AIFMD would be expanded to include, among other things, details of the AIF's liquidity risk management and existing redemption arrangements, and any fees and charges connected with the operation of the AIF which would be borne by the AIFM or its affiliates. Quarterly reports would need to detail the AIF's originated loan portfolio (if any), as well as any special purpose entities established in relation to the AIF's investments.
- Liquidity management toolkits – non-EU AIFMs managing open-ended AIFs should be aware that the proposals would enable competent authorities to require them to activate or deactivate the appropriate liquidity management tool(s) should they deem it in the interests of the public or investors to do so.

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