Channel Islands Funds Quarterly Update: Q2 2022

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Jersey developments

New States Assembly

This quarter's update is a little lighter on new legislation thanks to the pre-election purdah period imposed from mid-May.

Election night on 22 June brought, as ever, a handful of surprise results, although it is also clear there will be a large degree of continuity in the make-up of the new Assembly, continuing the island's long reputation of political stability. The increased diversity among States Members is also welcome, including the island's first female Chief Minister.

While at the time of publication the exact composition of the ministerial team is still to be determined, it is heartening to see that the vast majority of elected representatives reaffirmed in their manifestos the importance of the finance industry, and in many cases of sustainable finance, to the island.

Enhancements to Limited Partnerships Law approved

The States Assembly has approved a package of amendments to the Limited Partnerships (Jersey) Law 1994, the culmination of a cross-industry project to modernise and clarify aspects of the law.

This significant overhaul will be well-received for a number of reasons. The majority of changes are intended to provide additional flexibility in the drafting of partnership agreements, or to ensure Jersey's regime remains competitive as the "best in class" among leading fund jurisdictions.

In brief, the main changes include, among others:

- expanding the (non-exhaustive) list of "safe harbour" activities which limited partners may undertake without risking their limited liability status. The extended list includes activities such as voting on a wider range of matters and calling and participating in meetings of partners, among other things
- a limited partnership agreement will, however, be able to provide for specific circumstances in which a limited partner will be liable beyond its agreed contribution to the partnership
- the ability for partnership agreements to modify the statutory six month "clawback" period during which limited partners must repay amounts received when the partnership proved to be insolvent
- additional protection for investors (or their representatives) who sit on LP committees, who will benefit from an express statement that they owe no duty to the partnership, its partners, other committee members or third parties
- it will now be possible for a partnership agreement to limit or restrict limited partners' statutory right to inspect or take copies of partnership records. This will be beneficial where any such information is deemed commercially sensitive (as is often the case, particularly in carry partnerships)

The amendments also cover various administrative matters. Chief among these is a streamlining of the process for the termination and dissolution of a limited partnership. Similar to the summary winding up of a solvent company, the general partner or other liquidator of a limited partnership will first wind up the partnership's affairs before filing a statement of dissolution as the final act.

In addition, where the general partner is in continuing default of its duties under the law the Registrar may, after giving 30 days' notice, cancel the partnership's registration and require the partnership's affairs to be wound up (though this procedure will not alter the limited liability status of investors).

The changes are expected to come into force in Q3 2022, following Privy Council approval. Our briefing on the full suite of changes can be found here.

Proceeds of Crime Law updated

Following the consultation outlined in our Q4 2021 briefing, the States Assembly approved a redraft of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999.

The revised Schedule 2 will be worded so as to reflect more clearly and completely the latest

Financial Action Task Force (**FATF**) recommendations on activities which give rise to AML/CFT obligations. It will also remove references to the various automatically exempt activities – linked to exemptions under the Financial Services (Jersey) Law 1998.

These exemptions – such as the exemptions for functionaries of a "professional investor regulated scheme" which is commonly relied on in Jersey private fund structures – will continue to exempt persons from registration under the Financial Services law, but will no longer exclude such activities from the scope of AML/CFT obligations.

In practice, these obligations tend to be discharged by the structure's administrators, although once the amendments take effect in the coming months action will be required to ensure such functionaries comply formally with the requirements. Further guidance is expected to follow in due course.

Government consults on amendments to the Powers of Attorney Law

Proposals have been published to amend the Powers of Attorney (Jersey) Law 1995. The Government consultation takes into account feedback from industry on how this law applies in practice to international finance transactions and suggests a series of clarifying and otherwise beneficial amendments.

In an investment funds context, the proposals of particular relevance include that:

- the law will confirm that an attorney may, in certain circumstances, sign a power of attorney on behalf of a donor
- a power of attorney will be capable of being granted for more than a year where it secures the performance of an obligation owed to the donee. This would be broader than the current provision which expressly relates to Jersey security interests or security interests under foreign law

The law, if amended, will also specifically outline the formalities for execution of powers of attorney by entities with separate legal personality but which are not bodies corporate.

The consultation paper can be found here.

JFSC publishes feedback from supervisory risk examinations

Regulated persons should ensure they are aware of the findings of the Jersey Financial Services Commission's (**JFSC**'s) latest supervisory risk examinations, conducted in 2021.

Among the key findings are:

- instances where businesses had failed to establish and maintain adequate policies and procedures, or where these had not been reviewed and updated in light of changes to the regulatory framework
- deficiencies in the Money Laundering Compliance Officer's reporting to the board
- deficiencies in the area of Business Risk Assessments including not keeping these up to date

Regulated persons should review the findings against their own businesses and consider whether they need to take any actions. The full feedback paper can be viewed here.

Businesses should also take into account the detailed findings in the report on the JFSC's 2021 financial crime examinations, which can be viewed here.

Ogier's regulatory experts will be happy to assist with this process, including reviewing and advising on any necessary updates to policies and procedures.

Revisions to Outsourcing Policy proposed

The JFSC has published a draft revised Outsourcing Policy for consultation. The consultation paper can be found here.

Ogier will be reviewing the revised draft and contributing to industry's response on the proposals. Please do contact the team if you have any comments or queries in relation to the proposals that you would like us to bear in mind in our response.

First national risk assessment focusing on virtual assets

Prior to the election, the Government of Jersey published the results of its review into the money laundering and terrorist financing risks associated with various facets of the virtual assets sector.

The report, found here, acknowledges that the sector is rapidly evolving. It concludes that, although the risks are currently limited given the small size of the virtual assets sector in Jersey, the enhanced data that will be collected in respect of virtual asset service providers in future will be beneficial.

This data (including data obtained as a result of the changes to the Proceeds of Crime Law covered above) will enable Jersey authorities to deepen their understanding and ensure Jersey's regulatory framework is comprehensive as the sector develops.

Digital solutions to CDD requirements

A joint consultation between the Jersey Financial Services Commission and the Government of Jersey aims to take advantage of digital technologies to facilitate efficient customer due diligence (**CDD**) while ensuring that the information obtained remains robust.

The concept of digital ID is encouraged by the FATF, whose globally-accepted standards for AML/CFT Jersey seeks to implement. In view of this Jersey has considered what barriers exist to the wider adoption of digital ID systems, and is seeking to understand where solutions might lie to these.

The consultation paper can be found here.

Fee updates proposed for fund services businesses

The JFSC is consulting on proposed increases in fees for fund services business. Existing fees would be subject to an increase of 5% over RPI, though this is linked to a reduction in the metrics used to calculate the fees.

It is also proposed to introduce a fee for applications which concern the acquisition of a Registered Person (in its entirety, rather than smaller changes of ownership), which require regulatory input but are not currently subject to any charge.

The consultation can be viewed here.

In addition, the JFSC has confirmed increases in fees connected with fund vehicles themselves – see here.

Guernsey developments

Compliance with financial sanctions

The Guernsey Financial Services Commission (**GFSC**) has published a report on the thematic review of its licensees' effectiveness in monitoring and compliance with targeted financial sanctions. The GFSC undertook the work back in 2021 having recognised the growing importance and complexity of sanctions compliance, and the Russian-Ukrainian war has only served to highlight the importance of robust and easily useable controls in this area. However, the GFSC's work predates the conflict and has therefore not assessed the work firms have put into implementing sanctions brought into effect as a consequence of Russia's invasion of Ukraine.

Over 260,000 business relationships with banks were subject to testing, and were found to test 99.8% responsible of inward transactions and 99.6% of outward transactions in and out of the Bailiwick during 2021. The results showed that only a small minority of firms were in need of material improvement and have been made the subject to risk mitigation programmes set by the GFSC.

All firms are obligated to manage sanctions risk and the GFSC hopes that the report will be of interest to firms in every sector, as they are all under the same obligations in respect of sanctions screening.

Number of Guernsey-domiciled funds highest in a decade

The number of investment funds domiciled in Guernsey is at its highest level in almost a decade, with the current total at 855, according to statistics released by the GFSC.

The total net asset value of Guernsey funds has increased in the last quarter by £6 billion (2.0%) to £309.6 billion. Over the past year, total net asset values have increased by £45.9 billon (17.4%). See here for the full report.

Guernsey proposes world's first Natural Capital Fund regime

Guernsey could become home to the world's first Natural Capital Fund regime after lawmakers and regulators propose its introduction in a new consultation paper.

The paper, published by the GFSC, proposes the creation of a Natural Capital Fund designation that is committed to making nature positive investments. It will complement the jurisdiction's existing regulated Guernsey Green Fund regime, which was introduced in 2018 and now channels more than £4.4 billion into green investments.

To be designated a Natural Capital Fund, funds will be required to set and monitor targets aligned with the United Nations' Sustainable Development Goals, as well as the Convention on Biological Diversity's Post-2020 Global Biodiversity Framework's 2030 Action Targets.

Read more here.

GFSC proposes measures to counter greenwashing

The GFSC has issued a consultation paper proposing new guidance to be made under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (the **POI Law**). The guidance relates to the transparency of environmental sustainability related claims and statements made in respect of Guernsey collective investment schemes which are authorised or registered under the POI Law.

In addition, the paper proposes additional guidance to be added to the Licensees (Conduct of Business) Rules and Guidance, 2021, clarifying the GFSC's expectations in respect of promotion and advertising by persons licensed under the POI Law, and in particular in relation to avoiding the risks of greenwashing.

Guernsey joins the Taskforce on Nature-related Financial Disclosure Forum

The GFSC has successfully applied to join the Taskforce on Nature-related Financial Disclosure Forum (**TNFD**) with the aim of further developing the Bailiwick as a leading centre for sustainable finance. The GFSC is already a member of the Sustainable Insurance Forum and the Network for Greening the Financial System.

The TNFD was established to develop and deliver a risk management and disclosure framework for organisations to report and act on evolving nature-related risks, with the aim of supporting a shift in global financial flows away from nature-negative outcomes and toward nature-positive outcomes.

As a member of TNFD, the GFSC intends to contribute to the TNFD's ongoing innovative work, an example of which is its new risk management and disclosure framework, which aims to enable organisations to report and act on evolving nature-related risks.

Updated mind and management requirements for the fiduciary and investment sectors

Following completion of its recent consultation on mind and management requirements for the fiduciary and investment sectors, the GFSC has issued updated consolidated versions of the Fiduciary Rules and Guidance, 2021 and the Licensees (Conduct of Business) Rules and Guidance, 2021 with the addition of a new rule requiring fiduciary and investment licensees (excluding investment licensees which are administered by another firm in the Bailiwick) to appoint such number of Bailiwick-based senior executives as is commensurate with the nature, size and complexity of the licensee's activities in the Bailiwick.

The new rules came into operation on 10 June 2022. Find out more here.

2021 GFSC Annual Report

The GFSC published its 2021 annual report and financial statements on 31 May 2022 (see here).

The report notes that the combination of the vast quantitative easing undertaken across the developed world to combat COVID-19 restrictions and the war in Ukraine have crystallised the inflationary risk the GFSC had previously highlighted. The fiscal and monetary responses to this inflation are likely to see increased financial stability risks in the year ahead. Firms need to be mindful of the effect these economic changes, possibly on a scale unseen in at least thirty years, may have on their customers, risk profiles and business models.

Consultation due on potential new VASP legislation

We anticipate that the GFSC will be publish a consultation paper in July on potential new legislation regarding virtual asset service providers (**VASPs**) in Guernsey. The paper is intended to propose a framework for implementing the FATF recommendations in this area.

About Ogier

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Regulatory information can be found under Legal Notice

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