

Channel Islands Funds Quarterly Update: Q1 2020

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1 Developments in Channel Islands in response to COVID-19

1.1 Economic substance

There has been concern, in light of the restrictions on travel as well as the need for individuals to self-isolate as a result of the COVID-19 pandemic, that it will not be possible or practical for some companies to comply with the directed and managed test for the purposes of economic substance rules for as long as the situation persists.

The "directed and managed" test provides, among other things, that meetings of the board of directors of companies within the scope of the relevant Economic Substance Law must be held in the relevant Island at adequate frequencies, that a quorum of the board of directors must be physically present in Jersey or Guernsey, as applicable, at those meetings and, where a meeting is called to consider a strategic matter, or a matter relating to the companies' core income generating activities, a majority of directors must be physically present in Jersey or Guernsey.

In response to this concern, the Comptroller of Revenue in Jersey has issued guidance to reassure companies that they will not be determined to fail the economic substance test where they have to adjust their normal operating practices temporarily, for example, by holding board meetings virtually rather than physically in Jersey.

The Director of Revenue Services in Guernsey has indicated that it would take a pragmatic approach in applying Guernsey's economic substance legislation. This has been communicated to the public by the Guernsey Society of Chartered and Certified Accountants (the **GCSSA**) and the Guernsey International Business Association (**GIBA**). The statements given by GCSSA and GIBA make reference to a number of discussions with the Director of Revenue Services on the matter, from which it is understood that the Director of Revenue Services would adopt a similar approach to its Jersey counterpart.

GCSSA and GIBA have made it clear in their statements that the pragmatic approach will apply only to adjustments required to mitigate the threats from the pandemic and would be likely to be taken so long as a company maintains and retains the relevant records to demonstrate its relevant policy regarding restrictions on travel for the company officers and the period of time such policy was in place.

Whilst this guidance is a practical solution for many companies, we would advise that companies should:

- continue to ensure that board meetings are properly convened and held;
- maintain and retain relevant records to demonstrate the reasons why the company was unable to comply with the requirements of the directed and managed test;
- consider the appointment of alternate directors who are resident in the relevant Island and who will be available in the event that individual directors are unavailable or temporarily incapacitated; and
- if the company conducts a regulated activity, advise the Jersey Financial Services Commission (**JFSC**) or the Guernsey Financial Services Commission (**GFSC**), as appropriate, in the event that any matter arises which requires the company to notify, or seek any regulatory approvals from, the relevant regulator (see 1.3 of this briefing for further information on notification requirements).

Please find attached here our separate Jersey and Guernsey briefings on economic substance and COVID-19, which contain links to the relevant statements:

[Economic Substance Corporate Tax Residence and the implications of COVID-19](#)

[Economic Substance Corporate Tax Residence and the implications of COVID-19 in Guernsey](#)

1.2 Electronic signatures and original documents

With increasing remote working and self-isolation, signatories may be forced to sign documents remotely via electronic signature.

Generally, an electronic signature will be legally effective to conclude a contract, so long as:

- it is applied with the requisite intent and appropriate authority;
- for a legal entity, there are no restrictions on the use of electronic signatures in its constitutional documents;
- the law of the place of a company's incorporation permits electronic signatures and the use of electronic signatures will not impact on the validity of the contract; and
- there is nothing in the contractual terms themselves that stipulates something else.

In Jersey, the Electronic Communications (Jersey) Law 2000 was amended on 9 October 2019 by the Electronic Communication (Amendment of Law) (Jersey) Regulations 2019 to clarify the provisions around electronic information, electronic signatures, and the making of contracts by electronic means. A signature, seal, attestation or notarisation is not to be denied legal effect, validity or enforceability only because it is in electronic form.

In Guernsey, the Electronic Transactions (Guernsey) Law, 2000 confirms that a signature, seal, attestation or notarisation in electronic form will not be denied legal effect, validity, enforceability or admissibility solely because it is in electronic form. A signature in electronic form satisfies a law requiring a signature written by hand.

The Electronic Transactions (Electronic Agents) (Guernsey) Ordinance, 2019 provides enhanced certainty in relation to the legal effect, validity and enforceability of a contract carried out by means of an 'electronic agent' in relation to the formation, execution, performance and termination of a contract. The Electronic Transactions (Exemptions) Order, 2001 sets out certain exclusions.

In terms of licensees, the GFSC has advised that where licences/applicants are finding it impossible to wet sign application forms, due to the lack of a printer or a scanner, the following steps must be taken when submitting an application:

- if a printer is available, the paperwork should be printed, the signature box signed and the individual representing the licensee/applicant should take a photo of the application form and email it to the GFSC along with a pdf version of the unsigned application; or
- where a printer is unavailable, the licensee/applicant should copy out the signature box statement including any relevant declarations and the application's name onto a blank piece of paper, sign and date the statement then photograph and email into the GFSC as above, together with a pdf copy of the application form without the signature box being completed.

For additional detail on the signing of documents electronically in Jersey and Guernsey, please see our briefings:

[Electronic signing - Guernsey](#)

[Electronic signatures and the use of technology in Jersey](#)

1.3 Matters requiring notification to the JFSC and GFSC

Jersey

Certified funds are reminded of their duties under the Code of Practice for Collective Investment Funds to notify the JFSC of certain matters, which may be relevant as a result of COVID-19, which include:

- an inability to calculate the net asset value of the fund;
- a proposal to suspend or defer rights of redemption or trading of units in the fund;
- a suspension of the fund on any exchange on which it is listed;
- failure or likely failure on the part of the fund to comply with deadlines or time limits imposed on it by applicable rules (which includes the fund's constitutional documents and prospectus, as well as applicable laws and regulations), such as the failure to produce accounts, late valuations and inability to provide valuations; and
- a decision by the fund's auditor to qualify its audit report or to raise an emphasis of matter therein.

The overarching requirement is for there to be candour and co-operation in a fund's relationship with the JFSC. This principle extends to the provision of information and notification of significant events concerning non-regulated activities and other members of a corporate group.

Guernsey

The GFSC is conscious that firms will be experiencing operational difficulties in light of the measures introduced by the States of Guernsey in relation to COVID-19. The GFSC is mindful of this and of impending deadlines for financial returns and, therefore, is making the following changes to its expectations:

- returns to the GFSC which would ordinarily require an audit may be submitted in an unaudited form without a special concession from the GFSC; and
- financial returns for insurers, insurance intermediaries and managers, investment firms, funds and fiduciaries which would be required by the end of April 2020, may be submitted at any point before the end of May 2020. Similarly, the deadline for submission of unaudited returns for other firms with a non-calendar financial year, is extended by one month.

The GFSC has also confirmed that it does not require firms to notify them of a change to a firm's business plan because they are markedly increasing home working to comply with Public Health guidance. That said, a firm should advise the GFSC as soon as possible should it start to experience difficulty in being able to comply with its business plan or other regulatory requirements because of difficulties associated with working from home.

2 Jersey developments

2.1 Request for confirmation of business continuity measures

The JFSC has taken steps to enact its business continuity plan to ensure it is able to sufficiently manage the impact of the COVID-19 outbreak on its regulatory oversight function. In turn, the JFSC expects that all regulated businesses are undertaking a similar form of business continuity planning and will be asked to confirm that they have put in place sufficient measures to work remotely and remain operational, while continuing to meet regulatory obligations.

If you are experiencing any difficulties moving your organisation to remote working, or there has been a significant and negative impact on your business in trying to do so, please contact the JFSC as soon as possible.

The JFSC has advised regulated businesses to ensure that contingency plans are developed so that the span of control function is not compromised and that there is no interruption of individual specific accountabilities.

The general response from the JFSC to the COVID-19 response has so far been to assure businesses that they understand working practices are likely to change as more staff work from home, but expect businesses to have sufficient continuity and contingency measures in place so that regulatory obligations are adhered to.

The JFSC recognises that these restrictions may impact regulated businesses. In particular, it acknowledged that they may not be able to continue some activities. If a regulated business needs to reduce or change its current working activities, it is essential that it prioritises critical services and the safety of client assets. It must also continue to meet its regulatory requirements.

JFSC guidance on business continuity planning can be found here:

[Information for regulated businesses - Coronavirus \(COVID-19\)](#)

2.2 Extended audited financial submission deadlines in response to COVID-19

The JFSC has decided to allow more time for meeting deadlines in response to Covid-19.

Audited financial submissions have been given a three-month extension for submission due between 31 March and 31 July 2020. You need to notify the JFSC's Regulatory Maintenance team within ten working days of your original deadline.

Original deadline	Notify the JFSC by	Extension to
31 March 2020	17 April 2020	30 June 2020
30 April 2020	18 May 2020	31 July 2020
31 May 2020	12 June 2020	31 August 2020
30 June 2020	14 July 2020	30 September 2020
31 July 2020	14 August 2020	31 October 2020

The JFSC may ask regulated businesses to provide them with unaudited financial submissions before the revised deadline, so it's important that these are prepared as near as possible to the usual submission deadline.

2.3 Extension of other regulatory submissions

The JFSC has also revised some other regulatory submissions due between 31 March and 31 July 2020 and has agreed the following extensions:

Regulated business	Submission	Due	Extension
Collective Investment Funds	Fund statistics returns (self-managed funds)	20 working days after quarter end	40 working days after quarter end
Fund Services Businesses	Fund statistic return Coordinated Portfolio Investment Survey (CPIS)	20 working days after quarter end 6 April	40 working days after quarter end 6 May

Find out more at:

[JFSC allows more time for meeting deadlines in response to COVID-19](#)

2.4 JFSC general guidance for businesses

The JFSC is continuing to review additional regulatory requirements and updating guidance on a regular basis. The latest update includes information on:

- AML/CFT requirements – a reminder that there are other ways to obtain evidence of a customer’s identity, without meeting them in person. There are alternatives outlined in the Jersey AML/CFT regime;
- Board resilience and span of control – the JFSC expects regulated businesses to:
 - identify other individuals who could temporarily fulfil governance and management roles and other critical functions; personal questionnaires may need to be submitted;
 - appropriately share responsibilities and separate critical functions;
 - ensure governance arrangements continue to allow ongoing monitoring and control of the business, including the compliance function;
 - document any changes to policies and procedures and business continuity plans; and
 - actively engage with the JFSC.
- Compliance monitoring programme – these should continue but business risks may need to be re-assessed and some compliance control testing may need to be re-prioritised; and
- Personal indemnity insurance; consider whether any notifications to insurers are required to ensure the business is adequately insured at all times.

Please see a link to the latest update here:

[More information for businesses in relation to COVID-19](#)

2.5 Information for regulated businesses (COVID-19)

The JFSC has also created a dedicated area on its website with information relating to Covid-19, for both regulatory matters and registry users, which can be accessed here:

Response to COVID-19

By way of reminder, the JFSC is expecting businesses to:

- regularly monitor budgets against actual performance and increase ANLA and solvency calculations;
- review outsourcing arrangements and make alternative arrangements if the outsourced party can no longer continue to fulfil the activities;
- notify them of any attempted or successful cyber-attack or fraudulent activity; and
- observe obligations for suspicious activity reporting under the Money Laundering (Jersey) Order 2008 and the relevant AML/CFT Handbooks.

The JFSC is also postponing its onsite examination programme for an initial period of four weeks.

2.6 COVID-19 and AGMs for Jersey Public Companies

COVID-19 is putting pressure on boards to make decisions quickly about upcoming AGMs with the health and safety of all stakeholders attending being the paramount consideration and to communicate with their investors about how best to proceed in such uncertain times.

Public companies incorporated in Jersey have a legal obligation to hold an AGM in each calendar year with not more than 18 months elapsing between the date of one AGM and the next.

Companies will need to consider their own individual circumstances, including their articles of association and any other relevant matters, however some options they may consider include:

- to adapt the basis on which you hold the AGM;
- to delay convening the AGM, if notice has not yet been issued;
- to postpone the AGM, if permitted under the articles;
- to adjourn or postpone the AGM; and
- to hold a hybrid AGM, if permitted under the articles.

Please find attached here our briefing in relation to AGMs for Jersey public companies, for further information:

[COVID-19 and AGMs for Jersey Public Companies](#)

3 Guernsey developments

3.1 Directors' duties

The GFSC has issued a reminder to directors of licensees of the requirements regarding Financial Resources, both capital and liquidity, as required by various rules issued by the GFSC.

Directors are expected to act appropriately in these challenging times before making decisions to issue dividends, upstream excess capital or liquidity, intercompany loans or any other decision that materially financially weakens the local business, being mindful that they may not be in a position to have full and perfect information coupled as well with their duties towards their own company.

3.2 Exit interview of MLROs and MLCOs of Banks and Fiduciary Firms

With effect from January 2020, the GFSC will be introducing exit interview of individuals who held the position of Money Laundering Reporting Officer (**MLRO**) and/or Money Laundering Compliance Officer (**MLCO**) within a bank or fiduciary firm. This initiative is being piloted for a six month period and will only apply to individuals who have departed from a MLRO or MLCO position at a licensee under the Banking Supervision (Bailiwick of Guernsey) Law, 1994 (as amended) and the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 (as amended) (the **Fiduciaries Law**) since the beginning of 2020. The aim of holding such interviews is for the GFSC to develop a deeper understanding of MLRO/MLCO roles and the responsibilities and the challenges faced.

3.3 Guernsey Green Fund – EU Sustainability Taxonomy

Recent political agreement has been reached between the European Council and the European Parliament on a EU-wide classification system, or "Taxonomy", which will provide businesses and investors with common language to identify what economic activities can be considered as being environmentally sustainable.

The detailed criteria underlying the Taxonomy will be developed and finalised by the European Commission during the course of 2020 and it is the GFSC's intention to ensure the Taxonomy as an additional permitted standard for adoption by a Guernsey Green Fund.

3.4 Update approval for Guernsey Insolvency Law

On 15 January 2020, the States of Guernsey passed the Companies (Guernsey) Law, 2008 (Insolvency) (Amendment) Ordinance, 2020, making Guernsey an even more desirable forum for insolvency proceedings.

The new legislation is set to modernise Guernsey insolvency law, bringing the jurisdiction in line with the United Kingdom and other offshore jurisdictions such as the British Virgin Islands and the Cayman Islands. The changes will affect all new liquidations and administrations and will come into force when regulations to that effect are made by the States of Guernsey Committee for Economic Development.

Key developments include changes to voluntary winding up by company members, the power to demand documents and interview individuals; the power to disclaim and the winding up of non-Guernsey companies.

For further information on the changes to Guernsey's insolvency regime:

[2020 heralds new insolvency law changes for Guernsey](#)

3.5 The Fiduciary Rules Guidance 2020 and the Pension Scheme and Gratuity Scheme Rules and Guidance 2020

On 18 February 2020, the GFSC issued final rules and guidance under the Fiduciaries Law which ensures that the Bailiwick's regulatory regime continues to be compliant with international standards and is appropriate for the Guernsey market. The Fiduciary Rules and Guidance replace the existing Codes of Practice in a single rule book and bring the regime into compliance with the Group of International Finance Centre Supervisors' Standard.

The Pension Scheme and Gratuity Rules and Guidance also reflect the consolidation of the conduct of business elements of current Pension Rules into the new Fiduciary Rules and remove

elements of duplication.

4 Other News

4.1 Property Fund Suspensions

The commercial property market is facing unprecedented circumstances as a result of COVID-19 and as such valuation firms can no longer make reliable judgements on value. Valuers are still able to produce valuations but with significantly less certainty than under normal market conditions.

Under FCA rules applying to funds investing in inherently illiquid assets, such as commercial property, funds with more than 20% of their portfolio subject to material valuation uncertainty are required to suspend subscriptions and redemptions in the interest of all investors.

Fund managers are acting rapidly to protect investors and there have been a number of suspensions with more likely to occur.

Please see section 1.3 above in relation to matters requiring notification to the JFSC and GFSC, which includes any proposal to suspend trading.

4.2 Increase in Fintech start ups

The coronavirus pandemic is causing disruption to global economies, creating challenges and difficulties in all sectors. However, there are glimmers of hope for fintech start ups which will be of interest to venture capital firms. As social distancing becomes the norm, consumers are driven online and adoption of new technology will be accelerated. The companies that are nimble and agile, and can quickly adapt to differentiated situations, will benefit the most, whilst capital intensive companies remain at risk.

Consolidation in this market and more M&A is to be expected, which presents opportunities for venture firms.

4.3 The International Stock Exchange 2019 statistics

More than 650 new listings were made on The International Stock Exchange (TISE) during the course of 2019.

The new listings contributed towards a 5% growth in the total number of listings on TISE in 2019 and there were 2,995 securities listed on the market at the end of December 2019 (up from 2,857 at the end of December 2018).

TISE has maintained its position as a leader in the European high yield bond market, with 55 securities issued by global brands, taking the total beyond 200 at the end 2019.

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