Channel Islands Funds Quarterly Update: Q2 2019

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1 Developments in the Channel Islands

1.1 Substance requirements in Jersey and Guernsey

On 26 April 2019, the Crown Dependencies agreed to jointly issue further guidance on aspects in relation to the economic substance requirements as issued by Guernsey, Isle of Man and Jersey (the Guidance Notes). The Guidance Notes were the second piece of guidance issued jointly by the Crown Dependencies and provide additional guidance on the scope and application of the economic substance legislation. The Guidance Notes are intended to be a work in progress and will develop through further discussions with the OECD and the EU Code of Conduct Group.

Jersey

Jersey specific guidance was also released by Revenue Jersey to disclose the additional questions relating to economic substance which will be included in tax returns commencing from 2019.

On 4 June 2019, the States adopted the Taxation (Companies-Economic Substance) Amendment (Jersey) Law 201- which came into force on 1 January 2019. The Law makes amendments to the Taxation (Companies- Economic Substance) (Jersey) Law 2019, and clarifies that all of a company's core income-generating activities must take place in Jersey, to ensure it will meet the commitments given by Jersey to the Council of Europe's Code of Conduct Group.

Guernsey

The Director of Revenue Services in Guernsey issued a Circular on 17 June, detailing certain clarifications that were being proposed to The Income Tax (Substance Requirements) (Implementation) Regulations, 2018 and The Income Tax (Substance Requirements) (Implementation) (Amendment) Regulations, 2018 (collectively referred to as the Regulations). Of particular interest to fund managers is that the circular set out proposals that tax exempt entities (other than regulated collective investment vehicles) will be brought into scope of the Regulations, notwithstanding that they are currently regarded as not resident for tax purposes in Guernsey. The Circular does, however, clarify that regulated collective investment vehicles are out of scope of the Regulations.

We continue to monitor the developments relating to the new substance law, including the impact of the Guidance Notes. Our briefings can be accessed here

1.2 Provisions relating to Countering Financial Crime and Terrorist Financing

Jersey

On 3 June 2019, the Jersey Financial Crime Strategy Group (JFCSG) published the consultation response and policy paper with regard to the implementation of the 2012 FATF

Recommendations on Anti-Money Laundering and Countering the Financing of Terrorism. Following the Money Laundering Amendment No.10 Jersey Order 2019 coming into effect on 12 June 2019, the AML/CFT Handbook for Regulated Financial Services Businesses has been updated. As part of this, within paragraph 4.3.2, a reference to E-ID was inserted into the overview to make it clear that E-ID is an option to verification when obtaining evidence of identity under that part. Further detail explaining the legislative changes can be found in the consultation paper here and the feedback paper here.

Guernsey

The Guernsey Financial Services Commission (the GFSC) has issued, in final form, the revised Handbook on Countering Financial Crime and Terrorist Financing (the Handbook).

This follows the approval of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulation 2019 by the States of Guernsey on 12 June 2019. The amendments introduce an activation date of 31 March 2019 for the application of measures relating to domestic politically exposed persons and change the legal definition of Money Laundering Compliance Office and Money Laundering Reporting Officer. Outside of these changes, additional amendments proposing a small number of changes to rules and guidance on collective investment schemes traded on a recognised stock exchange and to guidance on employer funded benefit and pension schemes were put forward.

The revised Handbook, including the rules and guidance contained therein, came into effect on 13 June 2019.

2 Jersey developments

2.1 Legislation updates

On 21 May 2019, the States adopted the Revenue Administration (Jersey) Law 201-. The law makes provision for the administration of taxes and other charges under various enactments which raise revenue for the States of Jersey, establishes the office of Comptroller of Revenue (in place of the existing office of Comptroller of Taxes) and introduces important modernisations to the administration of Jersey's tax system.

2.2 Regulatory fees

In June 2019, the JFSC published its Feedback Paper to Consultation Paper No.4 2019 on proposals to change FSB, AIF, AIFSB, CIF, COBO and QSMA fee rates. Accordingly, the JFSC has amended such fee rates in line with the levels consulted on, which have applied since 1 July 2019. The new fees can be found here.

3 Guernsey developments

3.1 First quarter investment statistics 2019

The net asset value of total funds under management has increased by £17.9 billion for the year since 31 March 2018.

Guernsey domiciled open-ended funds remained unchanged over the quarter at £42.5 billion, which represents an increase of £0.7 billion over the year since 31 March 2018. Closed-ended funds also experienced an increase of £6.4 billion over the year since 31 March 2018.

Non-Guernsey schemes, for which some aspects of management, administration or custody is carried out within the Bailiwick of Guernsey, increased by £0.9 over the first quarter of 2019 to £63.7 billion.

3.2 Guernsey Financial Services Commission's 2018 Annual Report

The GFSC has published its 2018 annual report and financial statements.

Published on 7 May 2018, the report explores the level of new financial services coming to Guernsey during the course of 2018, with the investment sector in particular seeing an uplift in applications.

Over the past year, the GFSC has worked with government and industry to develop new policy initiatives such as the Guernsey Green Fund Rules, as well as proposals for regulating lending and credit.

2018 was a strong year for the GFSC in terms of income, partly driven by the fact that a number of firms did not surrender their licences prior to the end of 2017 as anticipated. On the expenditure side, the increase experienced was attributable to a number of one-off projects that the GFSC is undertaking to ensure the right systems are in place as well as legal costs incurred in taking forward enforcement cases.

The annual report also includes a new section on the GFSC's three year business plan.

3.3 Enforcement powers of the GFSC

The GFSC can seek to impose prohibitions on individuals to prevent them from continuing to work in the financial sector. Often such prohibitions have been time-limited, although it was possible for the GFSC to issue lifetime prohibitions where the circumstances warranted such an approach.

In the recent case of Y v GFSC (Royal Court, unreported 47/2018), however, the sanctions imposed on an individual were appealed to the Royal Court.

Having considered the appeal, the Royal Court decided that (i) the imposition of a time-limited prohibition and (ii) the disapplication of the six-directorship exemption for licensing under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 (as amended) for a specified period, went beyond the GFSC's legal powers. Instead the Royal Court decided that the GFSC should follow a similar approach adopted by the UK Financial Conduct Authority (the FCA) and only issue indefinite prohibitions and disapply the six-directorship exemption indefinitely.

Concerned with the Royal Court's decision, the GFSC decided to lodge an appeal with the Guernsey Court of Appeal. In its judgment, the Court of Appeal struck down the finding of the Royal Court that time-limiting prohibitions and disapplication of the six directorship exemption went beyond the scope of the GFSC's legal powers. Instead, the Court of Appeal confirmed that the GFSC had correctly interpreted the scope of its legal powers.

3.4 Mini-bonds

The GFSC has issued an FAQ to those considering investing in mini-bonds.

Mini-bonds are an alternative method of finance for companies to borrowing money from a bank. Mini-bonds are not directly authorised by the GFSC nor the FCA and, in the UK, are not covered by the Financial Services Compensation Scheme. Similarly, there is no compensation scheme for those who invest in mini-bonds offered by local companies in Guernsey.

The GFSC's FAQ can be found here

4 Global developments impacting Channel Islands vehicles

4.1 European Parliament adopts disclosures relating to sustainable investments and sustainability risks

On 18 April 2019, the European Parliament published the adopted provisional texts in relation to the proposed regulation on disclosures relating to sustainable investment and sustainability risks. Among other things, the regulation seeks to achieve more transparency on how financial market participants and financial advisers integrate sustainability risks into their investment decision, investment or insurance advice.

4.2 European Commission guidelines and reports on sustainable finance

The European Commission published new guidelines on 18 June 2019 on corporate climate-related information reporting, as part of its Sustainable Finance Action Plan. The purpose of these guidance is to provide companies with practical recommendations on how to better report the impact that their activities are having on the climate as well as the impact of climate change on their business. Three new reports were also published by the Technical Expert Group on sustainable finance, including the key recommendations on the types of economic activities that can make a real contribution to climate change mitigation.

4.3 HM Treasury consultation on the transposition of the Fifth Money Laundering Directive

On 15 April 2019, UK HM Treasury published a consultation paper seeking views on the transposition of the Fifth Money Laundering Directive (5MLD). 5MLD expands the scope of the Trust Registration Services set up by the HMRC in 2017 to registration of all express trusts (UK and some non-EU residents that acquire UK land or property or enter into a new business relationship with an obliged entity on or after 10 March 2020), not just those who are liable to pay UK tax. The consultation also sets out new data sharing requirements which mean information on the register may be disclosed to others in addition to the current obligation HMRC has to share data with other law enforcement authorities. The deadline for responses was 10 June 2019.

4.4 Non-UK resident capital gains elections: collective investment vehicles

In April 2019, HMRC published the forms that may be used by fund managers wishing to make an election under paragraph 8 or paragraph 12 of Schedule 5AAA of TCGA 1992 (election for transparency or exemption). Further guidance on the use of these forms, in the form of a new Annexe 3 to Appendix 15 of the Capital Gains Manual, is also available on the HMRC website.

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