



Channel Islands Funds Quarterly Update: Q4 2022

Newsletters - 12/01/2023

Pan-island developments

TISE launches new transition offering

The International Stock Exchange (TISE) has launched a new transition offering within its sustainable finance segment, TISE Sustainable, to cater for transition bonds and issuers, supporting initiatives which lead to a lower carbon economy and society. Find out more in our [briefing on the new offering](#).

Jersey Developments

£29 billion rise in Jersey regulated fund NAV

The latest quarterly statistics published by Jersey Finance reveal that the net asset value of regulated funds under administration in Jersey increased by £29 billion during Q3, to £487.5 billion overall.

The quarter also showed continued growth in the number of Jersey Private Funds, with 586 registered at the end of Q3. In addition, 658 regulated collective investment funds were recorded, seven fewer than the previous quarter.

View the [full statistics](#).

Proposed access by Obligated Entities to Beneficial Ownership register

The Government of Jersey has issued a response to the consultation, conducted in October 2022, proposing to extend access to the central register of beneficial ownership and control to 'obliged entities' who are required to conduct client due diligence. The proposal to open the registers to certain obliged entities is in line with the Island's ongoing commitment to international standards of accessibility and transparency.

The definition of 'obliged entity' will be aligned to the definitions of Financial Institution and Designated Non-Financial Businesses and Professionals published by the Financial Action Task Force (FATF), and may be supplemented to better reflect Jersey's business sectors.

It is proposed to make only certain data available to obliged entities via a portal, to monitor access and to ensure only authorised persons have access. The limited data would include individuals' names, date of birth, country of residence, nationality and residential address, and details of the extent and nature of their ownership and control of the relevant legal entity.

View the [consultation paper](#) and the [consultation response and policy paper](#).

The plans have, however, been paused temporarily in light of the landmark judgment of the Court of Justice of the European Union on 22 November 2022. The Court held that the EU's 4th Anti-Money Laundering Directive is invalid where it requires Member States to grant the public access to beneficial ownership information. The delay to the implementation of the 'obliged entity' regime is to enable the Government of Jersey to consider the impact of this judgment and to obtain specialist legal advice. This is expected to be completed in early 2023.

Jersey recognised for tax cooperation

Jersey has received the highest rating of "on track" from the OECD Global Forum on Transparency and Exchange of Tax Information for its practical implementation of the common reporting standard (CRS). The review considered whether jurisdictions have implemented necessary laws, processes and systems to ensure their financial institutions are complying with the CRS, and whether they are properly collecting and exchanging the information collected.

Update on AML/CFT scope exemptions

Final feedback has been published following the further consultation (as reported last quarter) on implementing Jersey's updated regime for anti-money laundering and countering the financing of terrorism (AML/CFT).

As a reminder, Schedule 2 to the Proceeds of Crime (Jersey) Law 2002 is to be recast to align more clearly with FATF's list of Financial Institutions and Designated Non-Financial Businesses and Professions, without reference to the exemptions under which a number of entities - referred to as 'previously-exempt supervised persons' or PESP - are currently themselves not subject to AML/CFT requirements.

The consultation process has focused on ensuring Previously Exempt Supervised Persons (PESPs) have a pragmatic route to comply with their AML/CFT obligations. In many cases this will include ensuring formal arrangements are in place with the regulated service providers who currently perform the AML/CFT function for client structures (who will be known as the 'Anti-Money Laundering Service Provider' or AMLSP).

View the [feedback paper](#). The refined proposals have now been finalised in regulations which have been lodged for debate by the States Assembly in Q1 2023. The changes (including the recast Schedule 2 to the Proceeds of Crime Law approved previously) are expected to be implemented shortly following this.

A six-month transitional period will then commence, during which PESPs and proposed AMLSPs will need to take action to understand how the revised regime will apply to them and ensure they comply.

PESPs will need to ensure that they are able to rely on their regulated service provider to act as AMLSP and that these arrangements are formalised. Proposed AMLSPs should ensure their registration under the Financial Services (Jersey) Law 1998 includes one of a number of specified classes of trust company business or fund services business in order to act as AMLSP. The AMLSP must then apply to the JFSC with a list of PESPs proposed to be serviced, including details of the individuals to be appointed as MLRO and MLCO to those entities. These individuals will be subject to assessment by the JFSC to ensure they are fit and proper to perform the roles for PESPs.

Ogier will shortly publish a more detailed briefing on the requirements.

Proposed revisions to the JFSC's Outsourcing Policy

The JFSC has published feedback on its consultation paper regarding changes to its Outsourcing Policy, as mentioned in our Q3 [briefing](#). Among other things, the revised Outsourcing Policy will include further clarity regarding provision of data centre and cyber security services, and specify the extent to which the activities of PESPs and AMLSPs are subject to the policy.

The responses, and further revised draft can be found in the [Outsourcing Policy](#). Ogier will continue to input on the proposals and would be happy to coordinate any feedback that clients would like to provide to the JFSC.

Updates to the AML/CFT Handbook

On 23 December 2022, the AML/CFT Handbook was amended to expressly refer to countering proliferation financing. This is not a change in policy and it remains the JFSC's expectation that controls are in place regarding proliferation financing. Rather, the Handbook (which will be known as the AML/CFT/CPF Handbook) will more closely align with the wording of the FATF's recommendations, which specifically reference the financing of proliferation of weapons of mass destruction in addition to AML/CFT.

The Handbook has also been updated to include further explanatory graphics and to implement the changes required regarding digital ID systems (as set out below at 2.7) and those resulting from the Limited Liability Companies (Jersey) Law 2018 coming into force.

Consultation paper on further enhancements to the AML/CFT/CPF Handbook

The JFSC has proposed to expand the guidance notes in the AML/CFT/CPF Handbook and add new Codes of Practice across a number of sections. The guidance notes are non-binding, however they suggest how a relevant person may demonstrate compliance with the requirements.

The proposals include amendments to the following areas:

- supervisory risk data questionnaires;
- identification measures (specifically regarding understanding the nature of a customer's business);
- further guidance on identification measures where one off transactions involve introducers / referrers, intermediaries / nominees / agents and complex ownership structures;
- ongoing monitoring (specifically in relation to sanctions screening and monitoring);
- further clarity regarding enhanced CDD measures;
- enhancements to internal and external SARs;
- screening, awareness and training of employees who solicit funds from customers;
- enhancements to record keeping requirements; and
- specific guidance and examples relating to estate agents and high value dealers, lawyers and accountants.

Responses to the consultation paper are due on 13 January 2023. View the [consultation paper](#) detailing the proposed updates.

Feedback on the recent consultation on the facilitation of the adoption of Digital ID Systems

As mentioned in our Q2 2022 [briefing](#), the JFSC and Government of Jersey conducted a joint consultation on facilitating the adoption of digital ID systems.

Following the feedback, it is proposed to take the following next steps:

- (a) updating the AML/CFT/CPF Handbook with guidance on how supervised persons may meet their obligations under the Money Laundering (Jersey) Order 2008 (the **Money Laundering Order**) in the event they adopt a digital ID system;
- (b) allowing for a statutory safe harbour for the use of digital ID systems in the Money Laundering Order; and

(c) developing an educational programme for the adoption of digital ID systems by Jersey Finance and Digital Jersey.

View the [consultation response paper](#).

Fee updates for trust company business, general insurance mediation business, money services business and Schedule 2 fees

With effect from 1 January 2023, the fees payable to the JFSC for the trust company business, general insurance mediation business, money services business sectors and Schedule 2 businesses have been increased by 15.4%, comprising Jersey RPI of 10.4% and a contribution of 5% towards the JFSC's ongoing financial resilience.

Feedback and further consultation to amend legislation regarding "arranging" in investment business

As mentioned in our [Q3 briefing](#), a feedback and further consultation paper was issued by the JFSC in September 2022 in connection with the ongoing proposals to bring the activity of 'arranging' into the scope of 'investment business' under the Financial Services (Jersey) Law 1998.

No further responses were received. The proposals will now proceed through the legislative process. The timeline for implementation is not yet known.

| Guernsey Developments

Guernsey Financial Services Commission discusses environmental finance at COP15

The director general of the Guernsey Financial Services Commission (**GFSC**), William Mason, joined an international panel at COP 15, the UN Biodiversity Conference, to discuss how private capital can protect biodiversity and climate objectives. The director general also spoke at the World Biodiversity Summit, working with Guernsey Finance, to explain the contribution the Bailiwick is making to grow environmental finance.

The GFSC's attendance at the panel comes shortly after the commission launched its Natural Capital Fund framework, as part of [Guernsey's growing Sustainable Funds Regime](#).

Total net asset value of Guernsey funds was £302.7 billion at the end of Q3 2022

Third quarter [2022 investment statistics](#) released by the GFSC show that the total net asset value of Guernsey funds was the same in Sterling terms as it was in Q2, at £302.7 billion. In addition, the statistics show that total net asset values increased by £12.8 billion (4.4%) from the past year.

Within these totals, Guernsey domiciled open-ended funds decreased over the quarter by £0.6 billion (-1.1%) to £53.6 billion. The Guernsey closed-ended sector increased over the quarter by £0.5 billion (0.2%) to £249.1 billion.

Within the totals for Guernsey Funds, Guernsey Green Funds held a total net asset value of £5.6 billion at the end of the quarter.

Guernsey welcomes new insolvency law

Guernsey's new insolvency law and rules, which came into force on 1 January 2023, are expected to significantly modernise the insolvency process. The changes come at a time of increasing insolvency as a result of the ongoing impact of the pandemic, the war in Ukraine and resultant cost of living crises in many global economies.

The new law will bring Guernsey's insolvency legislation in line with comparable jurisdictions such as England and Wales. It remedies issues in the previous regime such as the lack of creditor oversight in a voluntary liquidation and the lack of statutory clawback provisions. Find out more about [Guernsey's new insolvency law](#).

Update on the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022

The [Lending, Credit and Finance \(Bailiwick of Guernsey\) Law, 2022](#) (the LCF Law) partially came into force on 1 January 2023.

At this stage, those provisions of the LCF Law which will allow the GFSC to put in place relevant rules and guidance, and to invite applications for licensing, came into effect from the 1 January 2023. However, certain provisions of the LCF Law prohibiting entities from carrying out regulated services, business or activities without a licence will not come into effect until 1 July 2023. This allows for a transitional period in which entities currently undertaking regulated services, business or activities can make applications for licences. It is intended that the LCF Law will be fully in force on 1 July 2023.

In July 2022, the GFSC consulted with industry on its approach to regulating this sector, including specific exemptions to the requirement to be licensed under the LCF Law. Whilst the consultation closed in September 2022, the GFSC continues to work through the numerous responses. We understand that the GFSC intends to issue its response to the consultation, together with a set of finalised rules and guidance, together with a list of specific exemptions from the requirement to apply for and hold a licence, by the end of January 2023.

Guernsey's government issues consultation on 'six directorship' exemption

In December 2022, Guernsey States' Policy and Resources Committee published a consultation paper seeking views on a proposed change to the requirements which affect some individuals acting as company directors, by way of business, in or from within the Bailiwick.

Acting as a director for any company in the Bailiwick, by way of business, requires directors to hold a personal fiduciary licence granted by the GFSC under the Fiduciaries Law, though there are a number of exemptions to this requirement. One exemption is the 'six directorship' exemption, which means individuals who hold directorships of six or fewer companies, being directorships which are not subject to another exemption under the Fiduciaries Law, are not required to hold a personal fiduciary licence. However, they are still subject to anti-money laundering and counter-terrorism financing obligations. In 2015, a MoneyVal report recommended measures should be introduced to ensure effective compliance with these obligations.

The proposed changes, which would see a registration framework extended to directors who come under the 'six directorship' exemption, are intended to be a practical and proportionate solution to deliver on the recommendation.

Details of proposed registration requirements and exemptions are included in [the consultation document](#).

GFSC increases 2023 licence fees after industry consultation

The GFSC will increase licence fees paid by firms from 1 January 2023 by 8% following a consultation paper on the fee rates and administrative penalties to apply in the new year.

The commission decided to proceed with a lower fee increase of 8%, rather than the 9% on which it had proposed, and details of its [annual fee process](#) can be found on the GFSC's website.

The GFSC sets out a modification of the Licensees (Capital Adequacy) Rules, 2021 for certain classes of licensee

The commission has issued [a notice setting out a modification](#) of the Licensees (Capital Adequacy) Rules, 2021 for any licensee under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (the **POI Law**) which does not have a physical presence in the Bailiwick, is administered by another licensee in the Bailiwick and which is a general partner, manager or investment adviser of a collective investment scheme authorised or registered under the POI Law.

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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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