

Channel Islands Funds Quarterly Update: Q1 2023

Newsletters - 05/04/2023

Pan-island developments

Non-UK unit trusts and the trust registration service

Trustees of Jersey or Guernsey Property Unit Trusts (JPUTs or GPUTs) should be aware of HMRC's updated guidance on its trust registration service. HMRC has now clarified that these trusts are required to register if the trustees have a UK tax liability (including income tax, CGT and SDLT) or acquire UK land on or after 6 October 2020.

The deadline for registration in respect of existing circumstances passed on 1 September 2022, and a rolling 90-day deadline now applies, so prompt action should be taken where required in light of the revised guidance.

Amendments to AIFMD

The proposed amendments to the Alternative Investment Fund Managers Directive (last covered in our [Q4 2021 update](#)) were approved by the European Parliament's Committee on Economic and Monetary Affairs (the **ECON Committee**) on 24 January 2023.

The proposals were further revised prior to approval. Among other things, the changes give greater certainty for managers and funds established in non-EU jurisdictions seeking to market under national private placement regimes, whose access depends on the jurisdiction remaining off the EU's list of non-cooperative jurisdictions for tax purposes and its list of high-risk third countries.

Under the amended drafting, the jurisdiction's presence on these lists will be assessed at the time when the relevant Member State allows the fund to be marketed to investors in that Member State (rather than on an ongoing basis). In addition, where a closed-ended fund is domiciled in a jurisdiction which is subsequently added to Annex I on the list of non-cooperative jurisdictions for tax purposes, the fund will be deemed still to satisfy this criterion for two years.

Both Jersey and Guernsey remain off both of these lists.

The amendments are now subject to debate between the Commission, the European Council and the ECON Committee (on behalf of the European Parliament) and must be adopted by Member States within two years following approval of the final text.

| Jersey developments

Jersey Private Funds reach significant milestone

Another quarterly update, another key statistic reached by Jersey Private Funds. This time, per the [Q4 2022 statistics](#) published by Jersey Finance, the number of JPFs (638) outstrips the number of regulated collective investment funds (637).

The growth of JPFs has continued as its speed to market and appropriate level of regulation are recognised in broader markets. The regime's flexibility has also seen JPFs used in a wider range of contexts, including to bridge the gap between private wealth and family office structures and institutional investment.

Elsewhere in the statistics, the net asset value of regulated funds under administration increased by £1.3 billion over the quarter, now standing at £488.8 billion. The island has £30.2 billion of funds under investment management, with a further £6.9 billion under qualifying segregated managed accounts.

Updated Schedule 2 and AML regime now in force

Changes to Jersey's anti-money laundering, counter-terrorist financing and counter-proliferation financing (AML/CFT/CPF) framework came into force on 30 January 2023 (the **Implementation Date**).

At the heart of the changes is a recast Schedule 2 to the Proceeds of Crime (Jersey) Law 1999, which sets out the activities and operations which, when carried on as a business, may pose an AML/CFT/CPF risk. Critically, certain additional activities have been brought into the regulatory perimeter set out in Schedule 2. Accompanying the changes is guidance from the JFSC assisting entities with determining whether they conduct those activities in circumstances where the AML/CFT/CPF obligations are mandated.

Entities established prior to the Implementation Date need to take action to assess their activities and, if necessary, comply with the AML/CFT/CPF obligations by the end of the transitional period on 30 June 2023 (the **Transitional Period**). Entities which were previously exempt from the requirement to comply are likely to be able to rely on their existing Jersey administrator to assist with these obligations, if in scope, as the Anti-Money Laundering Service Provider (**AMLSP**). Even where entities are not in scope, this determination should be carefully considered and recorded.

Entities established after the Implementation Date of the framework are not able to rely on the Transitional Period and must therefore conduct an impact assessment and, if necessary, take appropriate action to comply immediately following registration.

Please see Ogier's [full briefing on Jersey's proceeds of crime legislation amendments](#). Ogier can assist entities and AMLSPs in understanding their obligations under the new regime, and Ogier Regulatory Consulting can provide support in implementing the requirements.

Feedback on amendments to the AML/CFT/CPF Handbook

The JFSC has issued its feedback paper to the consultation (discussed in our [Channel Islands Funds Quarterly Update: Q4 2022](#)) on further amendments to the AML/CFT/CPF Handbook. In addition to the amendments consulted on, as modified following consultation responses, the revised handbook will incorporate changes arising from the Schedule 2 amendments outlined in the previous section.

Read the full [Jersey FFC feedback paper](#). The revised handbook will come into effect on 1 July 2023, in line with the end of the Transitional Period.

Revised Outsourcing Policy nearing completion

The further consultation period in relation to the JFSC's revised Outsourcing Policy, reported in [Channel Islands Funds Quarterly Update: Q4 2022](#), has now closed. The revised draft included a number of helpful amendments, including that the appointment of an AMLSP is excluded from scope (see paragraph 4 above). Material changes to existing outsourcing arrangements are now proposed to be covered under a simpler filing not requiring separate JFSC approval, unless there is a change in the nature of the outsourced activity itself.

Further feedback has been provided to the JFSC ahead of the revised policy coming into force, which is anticipated to be in July alongside the end of the Transitional Period.

Notice designating senior management functions

The JFSC's statutory notice designating which personnel within a registered person will constitute senior management came into effect on 13 March 2023. Read the full [notice designating "senior management functions"](#).

This designation is relevant in determining those roles which are within scope of the civil financial penalties regime in the event such persons are culpable in a registered person's contravention of the Money Laundering (Jersey) Order 2008 or a Code of Practice.

The JFSC advises that, as a matter of best practice, registered persons should identify which of their employees they consider fall into one of the four categories of senior management function and notify those employees accordingly.

Registered persons are not required to notify the JFSC of such persons, nor should personal questionnaires be completed. Details should only be provided to the JFSC if specifically requested.

Upcoming JFSC consultations

The JFSC has published its [2023 programme of consultations](#) and includes proposals for a "Mega Code" which will consolidate and simplify the existing codes of practice for regulated businesses (such as for trust company businesses, fund services businesses and certified funds, but excluding the separate Code of Practice for Alternative Investment Funds).

JFSC business plan

In February, the JFSC published its business plan for 2023, with a strategic focus on:

- continuing to increase its effectiveness in combatting financial crime;
- harnessing technology and influencing the digitalisation of financial services; and
- enhancing its own culture and employee proposition.

Read the [full business plan](#).

Combined Notification for partnerships in Jersey

With effect from 1 January 2023, all types of partnership (including general partnerships, limited partnerships, incorporated limited partnerships, separate limited partnerships and limited liability partnerships) that are required to report to Revenue Jersey are now required to file a Combined Notification.

All partnerships which are registered with the JFSC will now have been assigned a Tax Identification Number, and should identify a responsible partner (typically the general partner) and notify Revenue Jersey of this nomination. The responsible partner must attend to annual filings by 30 November in the year following the year of assessment.

Please see [Ogier's full briefing on a year of change for Jersey Partnership tax reporting](#).

Jersey LLC regime now fully in force

Jersey's new limited liability company (LLC) framework came into force on 14 February 2023.

LLCs are expected to be particularly attractive to US fund managers given their familiarity with this structure. LLCs may make an election at the time of registration to be a body corporate, providing additional flexibility for the vehicle to be used in a variety of different contexts, including as Jersey Private Funds and regulated or exempt general partners, investment managers or advisers to funds.

Jersey's regime has been designed so as to be familiar to those with experience dealing with Cayman Islands and Delaware LLCs, and where possible to compare favourably with those regimes.

Read our [briefing on Jersey's LLC regime](#) and a [comparison between Jersey, Cayman and Delaware LLCs](#).

Attorney General's guidance for Directors

The Attorney General has released guidance on the factors to be considered by the Royal Court when considering an application for the disqualification of a person from being a director of a company.

Please see Ogier's [briefing on the Attorney General's guidance](#).

Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 2023

This legislation, in force from 3 March 2023 alongside guidance notes from the Attorney General, enables deferred prosecution agreements (DPAs) to be reached with legal persons who self-report applicable offences, such as corporate trustees discovering AML failings or other criminal activity relating to a trust.

The introduction of DPAs will further enhance Jersey's ability to sanction legal persons. Self-reporting entities should not expect to avoid prosecution, but the Attorney General will consider the use of DPAs on a case-by-case basis.

| Guernsey developments

GFSC updates Natural Capital Fund rules and guidance

The Guernsey Financial Services Commission (GFSC) has updated the rules and guidance for the Natural Capital Fund to better reflect international agreements made at COP15.

The newly agreed framework centres on the goal of “30 by 30” - a target to achieve, by 2030, the effective conservation and management of at least 30% of the world's land, coastal areas and oceans, as well as the restoration of 30% of terrestrial and marine ecosystems. The commission has applied these updates to reference the Kunming-Montreal Convention on Biodiversity Global Biodiversity Framework.

The Natural Capital Fund launched in September 2022 as part of the growing Guernsey Sustainable Funds Regime.

Consultation paper published on financial crime return rules

The GFSC has published a consultation paper proposing rules for the mandatory filing of three existing financial crime returns to which administrative financial penalties will apply for late filings and inaccurate submissions. The Commission is proposing rules which will make mandatory the filing of the following returns within the timeframes set:

- the annual financial crime risk return from all licensed firms by 31 October each year
- the annual intermediary multi-scheme return from administrators of authorised and registered collective investment schemes by 31 May each year
- the quarterly financial flows return from banks within two months of quarter end

The Consultation Paper can be found on the [Commission's Consultation Hub](#).

Feedback published following consultation on new Lending, Credit and Finance Rules and Guidance

The GFSC has [published feedback](#) following its consultation on the new Lending, Credit and Finance Rules and Guidance. Guernsey's States of Deliberation's approved the Lending, Credit and Finance Law (**the LCF Law**) on 14 July 2022.

In the response to the feedback, the GFSC offers further clarification and explains how it has changed its approach to the implementation of the new law.

The LCF Law requirements come into operation on 1 July 2023 and the window for licence applications, including the exclusions and exemptions provided by the GFSC, formally opened on 1 February 2023. To determine if these apply to you, don't hesitate to reach out to your Ogier contact.

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