

Channel Islands Funds Update: Q2 2023

Newsletters - 06/07/2023

In our latest Channel Islands Funds Update, we round up recent legal and regulatory developments in Guernsey and Jersey, plus the latest insights and deals from our funds teams in both jurisdictions.

[Read our newsletter online.](#)

| Jersey developments

Schedule 2 transitional period has elapsed for modified AML/CFT/CPF regime

As readers of our quarterly update will be well aware, Schedule 2 to the Proceeds of Crime (Jersey) Law 1999 has been recast to bring further activities (including by removing exemptions) into the scope of Jersey's anti-money laundering, counter-terrorist financing and counter-proliferation financing (AML/CFT/CPF) regime.

The transitional period elapsed at midnight on 30 June, meaning that persons finding themselves within scope of the revised Schedule 2 should by now have taken action to (i) register with the JFSC for AML/CFT/CPF supervisory purposes and (ii) implement applicable AML/CFT/CPF measures.

In limited cases, the transitional period has been extended to 30 September 2023. These include directors, family offices which do not use a PTC administered by a regulated trust company business, and trustees in respect of trusts which undertake lending activities. Persons in these categories - and anyone who may not have taken the required steps during the transitional period - should urgently review their activities and seek advice as appropriate.

The Jersey Financial Services Commission (JFSC) continues to add to its Frequently Asked Questions and other supporting information concerning the interpretation of Schedule 2. These resources can be [found here](#).

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.

JFSC publishes new Outsourcing Policy

Shortly before our briefing went to press, the JFSC issued the final revised form of its Outsourcing Policy. The new Outsourcing Policy was originally proposed in June 2022 and has been the subject of consultation with industry, in which Ogier has been closely involved. Now finalised, it will take effect from 1 January 2024, providing a six-month transitional period during which businesses in scope should assess their compliance with the new policy.

Ogier will shortly publish a fuller briefing on the changes and can assist clients with evaluating their arrangements as necessary during the transitional period. The key takeaways include:

- the scope of the Outsourcing Policy has been extended, notably including AML/CFT/CPF obligations (linked to the changes described above) and obligations arising under the Alternative Investment Funds (Jersey) Regulations 2012 (though further guidance is anticipated in due course regarding how the policy will apply to the latter)
- in relation to AML/CFT/CPF obligations, the appointment of an AMLSP is out of scope, although if businesses outsource any elements of their AML/CFT/CPF compliance outside the AMLSP regime the Outsourcing Policy should be considered
- the policy includes specific guidance on how to demonstrate compliance where the outsourced function encompasses cloud computing services
- new outsourcing arrangements generally still require notification to, and prior confirmation of no objection from, the JFSC, although there are helpful carveouts such as where outsourcing involves certain technology services (such as cloud or data centre services), which require notification only. Material changes to existing outsourcing arrangements will also require a notification only rather than a further 'no objection', unless the change extends the activity being outsourced

Quarterly statistics: CIFs prove popular in Q1 2023

Jersey Finance's [Q1 2023 statistics](#) show that by 31 March 2023 the number of collective investment funds (CIFs) increased to 642, with 629 Jersey Private Funds (JPFs). This reminds us that Jersey continues to cater well for more regulated funds facilitating offers to an unlimited number of investors, in excess of the "no more than 50 offers or investors" rule applicable to JPFs. Whilst we anticipate the long-term trend will see further growth in the number of JPFs due to their high profile in the private funds space and the flexibility of the JPF product (particularly for first time fund managers), we are seeing managers continue to place confidence in Jersey for collective investment funds targeting a global investor base, due to the island's established and proportionate regulatory framework.

Elsewhere in the statistics, there was a slight decline in the net asset value of regulated funds under administration (now £461.5 billion), but the value of funds under investment management increased to £30.9 billion with a further £7 billion under qualifying segregated management accounts (again, a slight increase).

Limited partnership continuance regulations renewed

The so-called triennial regulations enabling foreign limited partnerships to migrate into Jersey have been renewed, three years after they were first introduced in July 2020.

As a reminder, these enable foreign limited partnerships to continue as a Jersey limited partnership under the Limited Partnerships (Jersey) Law 1994, provided that they are solvent and do not have legal personality, and provided that the jurisdiction in which they are currently established does not prohibit continuance overseas.

Read our [briefing on the limited partnership continuance process](#).

JFSC consultations - focus on climate risk as Mega Code proposals put on ice

We reported last quarter on a proposal to simplify and consolidate the existing codes of practice for regulated businesses (including trust company businesses, fund services businesses and certified funds) into a "Mega Code".

This proposal has now been deprioritised and may be picked up again in 2025. The core projects for the JFSC include a consultation on a climate risk code of practice, which is expected to be published shortly.

See the remaining [planned consultations for 2023](#).

Digital ID consultation closes

The Government of Jersey has consulted on amendments to the Money Laundering (Jersey) Order 2008. Among other things, the changes proposed include confirmation regarding use of digital ID (provided the system is compliant with criteria set by the Financial Action Task Force) and provisions enabling a risk-based approach to be taken to the declassification of politically exposed persons after a certain period of time.

The consultation ran from May to June 2023. Find out [more details](#).

FSB application form moves online

As part of the ongoing digitisation of the JFSC's processes, the application form for new fund services business registrations has been moved to the myJFSC portal. Paper applications are no

longer permitted.

Feedback from thematic review on role of the MLCO

The JFSC has published feedback from its Q3 2022 review of the role of the money laundering compliance officer (**MLCO**) within supervised persons. The MLCO must be a suitably senior employee within the supervised person, with the requisite authority, experience, skills, independence and resources to discharge the role effectively.

The review - taken from eight regulated businesses - identified a range of recommendations in areas relating to corporate governance, implementation of a compliance monitoring plan, policies and procedures, record keeping and employee training. Some out-of-scope findings are also covered in the feedback, notably in relation to the business risk assessment.

The [full feedback paper](#), including statements of best practice, is important reading for all supervised persons and their MLCOs. Ogier's Regulatory Consulting team is able to assist should businesses wish to review and refresh their compliance regimes in this area. Find out more about [Ogier Regulatory Consulting](#).

New sanctions compliance obligations in effect

As of 1 July 2023, all supervised persons are subject to updated sanctions compliance requirements under the AML/CFT/CFT codes of practice. These include further trigger events for sanction screening and the requirement for sanctions monitoring arrangements to assess the effectiveness and compliance of the supervised person's controls. A supervised person must also ensure it is signed up to receive sanctions alerts both from the JFSC and the Government of Jersey.

| Guernsey developments

The Lending, Credit and Finance Rules and Guidance

The Lending, Credit and Finance Law (the **LCF Law**) came into partial force on 1 January 2023 and came into full operation on 1 July 2023. The LCF Law creates a new licencing regime for, inter alia, lenders, virtual asset service providers (**VASPs**) and persons operating crowdfunding or peer to peer platforms. The LCF Law shall also repeal the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 and replace it with a licensing and regulation regime for businesses classed as “financial firm businesses”.

The Guernsey Financial Services Commission (**GFSC**) has, in support of the LCF Law, issued the new [Lending, Credit and Finance Rules and Guidance](#) (the **LCF Rules**) and a section 40 notice of exemptions (**Section 40 Exemptions**) which provides various exemptions under the LCF Law for persons that would otherwise be required to be licenced. The LCF Rules were further amended on 8 June 2023 in order to correct the anomaly where a holder of an exemption under the LCF Law

would be expected to refer to the LCF Rules which do not apply as a result of such exemption. The Section 40 Exemptions were also further updated on 23 June 2023 which, inter alia, seeks to clarify the application of the following class exemptions:

- lending secured against property which is outside the Bailiwick
- lending by person who are administered by a licensee under the Protection of Investors (Bailiwick of Guernsey) Law, 2020
- lending by companies within a trust structure
- lending by appointed motor traders

In addition to the Section 40 Exemptions, a person may also apply for an individual discretionary exemption which will be assessed by the GFSC on a case-by-case-basis.

Personal directorships - exemptions from licencing

The Regulation of Fiduciaries etc (Bailiwick of Guernsey) (Amendment) Regulations, 2023 come into operation on 8 July 2023 and under these rules, the available licensing exemptions for certain categories of personal directorship activities under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020 (the **Fiduciaries Law**) shall be expanded to provide for further categories of exemption.

The Policy and Resources Committee has also made regulations for the implementation of the new director registration regime which, subject to receipt of approval at the States of Guernsey meeting on 5 July, would also come into operation on 8 July. These regulations are the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Regulations, 2023 and the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2023 which seeks to amend the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the **Proceeds of Crime Law**).

The changes require that directors who benefit from the 'six directorships' exemption will be required to register with the GFSC under the framework for prescribed businesses and be subject to the GFSC's powers for such businesses (including the power to obtain certain information).

The two sets of regulations are connected insofar as the introduction of new, additional categories of licensing exemptions will reduce the number of individual directors using the 'up to six directorships' exemption under the Fiduciaries Law who would be required to register. The six directorships exemption applies to individuals who hold directorships of six or fewer companies and that are not subject to any other exemption under the Fiduciaries Law. Such individuals do not require a personal fiduciary licence to hold directorships within the exemption. An individual acting as a director by way of business who benefit from the six directorship exemption, although not required to hold a fiduciary licence, nonetheless remain subject to the Proceeds of Crime Law and must currently comply with AML/CFT obligations.

We envisage that, in line with its normal practice, the GFSC will publish a consultation paper feedback statement and at the same time issue supporting guidance for directors to help them understand their respective positions and obligations regarding licensing, licensing exemption and registration.

AML/CFL obligations for VASPs and additional obligations for trustees and partners

The GFSC has issued a [consultation paper](#) on the proposed additional rules and guidance for VASPs. It includes the information requirements for virtual asset transfers and general guidance for VASPs, and specified businesses with a connection to virtual assets, on how to meet the requirements of Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999 and rules in the Handbook on Countering Financial Crime and Terrorist Financing (the **Handbook**). These rules and guidance are included in a new chapter of the Handbook.

The consultation paper also seeks comments on proposed additional rules and guidance for trustees of trusts and partners (excluding limited partners) of partnerships and limited partnerships without legal personality to hold information on the identity of other regulated agents and service providers to a trust or partnership and disclose their status as trustee or partner. These rules will apply to licensed trustees and licensed partners.

These proposed rules and guidance are necessary to ensure that the Bailiwick continues to meet the recommendations issued by the Financial Action Task Force on combating money laundering and terrorist financing. This comes ahead of the Bailiwick's forthcoming evaluation by the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

Proposed new Guernsey Enterprise Investment Scheme

The Committee for Economic Development is seeking views from industry and stakeholders on a proposed Guernsey Enterprise Investment Scheme (GEIS). The GEIS aims to encourage investment into high growth, early-stage businesses and will grant certain Guernsey-based investors who invest into a qualifying business an equivalent tax relief incentive of up to 30% of the investment value. This consultation will be used to evaluate the investor and business interest in GEIS, the method of operation and eligibility requirements.

See the full [list of requirements for eligibility](#).

Changes to annual returns filed by fiduciary licensees

The GFSC has issued a notice on its website stating that the 2023 Fiduciary Annual Return includes the following additional question: "Breakdown of business by geography for trusts, foundations, companies and partnerships."

Currently, fiduciary licensees are required to identify the country of residence of the settlor of a trust, the founder of a foundation or the beneficial owner of a company but this change means that they will also be required to identify the geographic location of the structures to which they provide services. The geographic location includes the proper law of the trust or settlement as stated in the trust deed or the jurisdiction of incorporation or registration of a foundation, company, limited partnership or limited liability partnership.

Financial Crimes Returns Rules

The Financial Crime Returns Rules, 2023, which came into force on 28 April 2023, makes mandatory the filing of the annual financial crime risk return, the annual intermediaries return and the quarterly financial flows return for:

- personal fiduciary licence holders
- those licensed to carry on general insurance business only under the Insurance Business (Bailiwick of Guernsey) Law, 2002; or business as an insurance intermediary in respect of general insurance only under The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002
- those holding a licence to provide ancillary services only under Part II of The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022

The GFSC is taking a phased approach to the introduction of a filing penalty for late or inaccurate submissions of these returns. Their accuracy and timely submission will be monitored but is not subject to an administrative penalty for late or inaccurate filing this year.

Trading standards

The Trading Standards (Fair Trading) (Guernsey) Ordinance, 2023 (the Trading Ordinance) has been approved by the States of Guernsey but is only expected to be operational in late 2023.

The Trading Ordinance introduces a statutory framework for consumer protection and fair trading and applies to contracts between a trader and a consumer for the supply of goods, digital content or services. A trader means a person acting for purposes related to that person's trade, business, craft or profession, whether the person is acting personally or through another person acting on the trader's behalf or in the trader's name. A consumer means an individual acting for purposes that are wholly or mainly outside of the individual's trade, business, craft or profession.

To a large extent, the Trading Ordinance shall also apply to financial services provided to consumers.

Changes to Guernsey's insolvency regime

The Companies (Guernsey) Law, 2008 (Insolvency) (Amendment) Ordinance, 2020 (the **Ordinance**) and the Companies (Guernsey) (the Insolvency Rules) Regulations, 2022 (the **Insolvency Rules**) came into force on 1 January 2023 which brings long awaited changes to the Guernsey insolvency regime. The Ordinance and Insolvency Rules bring a significant set of reforms to Guernsey's insolvency legislation, which historically had limited operational provisions, bringing it 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 claw-back provisions.

The changes improve the assistance that Guernsey can provide to foreign insolvency office holders, especially those outside the UK. The Guernsey Royal Court also now has the ability to wind up foreign companies, which could be used in group-wide restructurings where the main proceedings are being run from Guernsey. The Ordinance and Rules shall not apply retrospectively but only to insolvency proceedings that commenced after 1 January 2023. Please read [our full briefing](#) on the changes.

Recent news and insights

The Jersey LLC - a gateway to Europe and the UK for US asset managers

With assets under administration for US promoters increasing in Jersey, the Channel Island is seeking to capitalise on its role as a gateway to Europe for US asset managers with the introduction of the limited liability company (LLC). Read [the full briefing](#).

Recent themes in Jersey private equity fund structuring

In this briefing, our team discusses key trends driving private equity fund and deal structuring in Jersey, including tailored structures, retailisation and secondary funds. Read the [full briefing](#).

Ogier in Guernsey advises on the establishment of Vision Blue Resources

Ogier's funds team in Guernsey has advised on the establishment of Vision Blue Resources Limited (VBR), which recently had its final close with total commitments exceeding US\$650 million. [Read more](#).

Taxation of Guernsey investment funds

This article provides a high-level summary of the Guernsey tax position of two of the island's most popular fund vehicles, limited partnerships and limited companies. Read the [full briefing](#).

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