

Channel Islands Funds Update: Q3 2023

Newsletters - 05/10/2023

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

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| Pan-island developments

TISE launches private market platform

The International Stock Exchange (TISE) has launched a new private market platform which comprises investments in assets not traded on a public exchange or stock market. This cloud-based service will give such "private" companies full control of their dedicated market, including approving and onboarding of shareholders to scheduling auction events and managing registers.

In order to be eligible to join TISE Private Markets, companies must be established in the Channel Islands, Isle of Man or United Kingdom and have a proven track record of profitability with a market capitalisation of at least £10 million.

| Jersey developments

Jersey anti-money laundering framework

PEP de-classification

In connection with Jersey's preparations for the MONEYVAL visit, the Jersey Financial Services Commission (JFSC), alongside the Government of Jersey, identified the need to align, clarify or expand certain provisions of the Money Laundering (Jersey) Order 2008 (the **MLO**).

It was acknowledged that most other jurisdictions provide the possibility for politically exposed person (**PEP**) de-classification under certain circumstances (subject to applying a risk-based

approach), and so the Money Laundering (Amendment No. 12) (Jersey) Order 2023 (read the [amendment in full](#)) was made to insert new provisions to enable a de-classification of a PEP in Jersey and to also make certain other amendments.

Temporary disapplication of certain AML/CFT/CPF requirements for directors

Money Laundering (Amendment No. 13) (Jersey) Order 2023 ([read the full amendment](#)) inserts a new Article 24B into the MLO which disapplies certain provisions of the MLO from 1 October 2023 until 30 September 2024. This temporary disapplication applies to directors who, on or after on 30th January 2023, acted as a director of a company and, in so acting, conducted a business that became a financial services business because of paragraph 23(2) of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999.

Amendments to NPTO

To provide clarification, the Proceeds of Crime (Duties of Non-Professional Trustees) (Amendment) (Jersey) Order 2023 (read the [full amendment](#)) amends Article 2 of the Proceeds of Crime (Duties of Non-Professional Trustees) (Jersey) Order 2016 (**NPTO**) (which disapplies most of the AML/CFT/CPF requirements for non-professional trustees (**NPTs**)) as follows:

- to align the terminology of the NPTO closer with Financial Action Task Force (**FATF**) terminology, replacing the existing term “by way of business” with the FATF term “as a business”
- to only apply to NPTs who are individuals (ie natural persons). This change reflects the original intention behind the NPTO that trustees who are legal persons will not be considered to be NPTs

These amendments are intended to address inconsistency in interpretation of the statutory and regulatory requirements.

Clarification in relation to PTCs

On 22 September, the JFSC re-issued its guidelines on interpretation issued under Article 36 of the Proceeds of Crime (Jersey) law 1999 (read the [revised guidelines](#)) to clarify that where a trustee is a **PTC**, it will be acting as a business and will need to register as a Schedule 2 business. "Private Trust Company" is defined in the revised guidelines as a trust company that has notified the JFSC that it is providing the service that is exempt from prudential and conduct regulation under the Financial Services (Jersey) Law 1998 under paragraphs 4 and 4A, Part 1 of the schedule of the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000. This clarification has removed the uncertainty regarding the "as a business" test for PTCs.

Further guidance on 'in or from within Jersey' for purposes of Schedule 2

If a person carries on activities listed in Schedule 2 of the Proceeds of Crime (Jersey) Law 1999 as a business "in or from within Jersey", there is an obligation on such person to register with the JFSC.

The JFSC has recently issued guidance on what constitutes "in or from within Jersey". This includes:

- for a non-Jersey entity, where (i) it is managed and controlled in Jersey, or (ii) it has a physical presence in Jersey (ie office space), or (iii) the entity has employees or agents operating in Jersey (ie located in Jersey with some degree of permanence and undertaking Schedule 2 activities from within Jersey)
- for a non-Jersey individual, where such person has some degree of permanence in Jersey (ie having a fixed/service office in Jersey taken in their own name for business activities)

Final deadline for registration of Schedule 2 businesses has expired

It is noted that the final deadline for persons carrying on Schedule 2 business and requiring to register with the JFSC, expired on 30 September 2023.

Ogier can assist entities and service providers in understanding their obligations under the new regime, and Ogier Regulatory Consulting can provide support in implementing the requirements.

Sound Business Practice Policy updates

The Sound Business Practice Policy (read the revised version) has been updated following the recent amendments to Jersey's AML/CTF/CPF regime (in particular, the amendments to Schedule 2 of the Proceeds of Crime (Jersey) Law 1999).

The principles regarding the activities the JFSC considers sensitive have not changed as a result of these amendments. The list of Table 1 activities has been amended to reflect the changes to Schedule 2, and as part of this amendment, the JFSC expanded the listed examples of what is covered in Schedule 2.

In addition, two further minor amendments were made as follows:

- following the coming into force of the LLC legislation, paragraph 3.1 has been amended accordingly
- addition of the word "qualifying" in Table 2, activity 6 to correctly reflect the definition of qualifying debt

Feedback on Revised Outsourcing Policy (OSP) follow-on consultation

Readers of our quarterly update will be aware that the JFSC recently issued the final form of its OSP (for further background on the OSP, see our Q2 2023 briefing). The initial consultation in respect of the amendments to the current OSP and guidance notes published by the JFSC was issued on 30 June 2022, with a follow-on consultation on 16 December 2022.

Notable amendments to the OSP are as follows:

- the direct appointment of an AMLSP to fulfil AML/CFT/CPF obligations is not in scope
- however, where any part of a supervised person's AML/CFT/CPF function is outsourced other than under the AMLSP regime, this is in scope of this new policy
- AIFs and AIFMs with obligations arising from the Alternative Investment Funds (Jersey) Regulations 2012 also find themselves expressly in scope

The final revised OSP, attached under Appendix A of the Feedback Paper, will be effective from 1 January 2024 after a six-month transitional period.

Read our [briefing on the OSP](#).

Amendments to Jersey's Financial Services Law

The Financial Services (Amendment of Law) (No. 6) (Jersey) Regulations 2023 (read the [full regulations](#)) together with an associated order, propose the following amendments to the Financial Services (Jersey) Law 1998:

- introducing as a new form of financial service business:
 - the activity of arranging for another person to deal in investments (limited only to the retail market)
 - the activity of operating an investment exchange
- clarifying, updating and aligning the definitions used in Schedule 1 of the Financial Services (Jersey) Law 1998 so that they are consistent with the MiFID II definitions

These amendments ensure Jersey's investment regime remains aligned to its key markets and gives retail consumers of Jersey's investment market equivalent protections. Amendments are also being made to the Financial Services (Investment Business (Restricted Investment Business - Exemption)) (Jersey) Order 2001 and Financial Services (Investment Business (Special Purpose Investment Business - Exemption)) (Jersey) Order 2001 to include making arrangements in relation to the relevant schemes.

Increase in JFSC fund fees in line with RPI

The JFSC has confirmed it will increase both fund fees and fund services business fees by 12.7%, in line with the retail prices index in Jersey (**RPI**), following the feedback received as a result of Consultation No3 2023 issued in May 2023. See the [JFSC's feedback in full](#).

The revised fees became effective from 1 July 2023.

Renewal of limited partnership continuance regulations in Jersey

The Limited Partnerships (Continuance) (Jersey) Regulations 2023 (read the [full regulations](#)) renew existing Triennial Regulations - the Limited Partnerships (Continuance) (Jersey) Regulations 2020 - to provide for the migration of foreign limited partnerships to Jersey. Due to the nature of triennial regulations, these will expire on 17 July 2026.

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

| Guernsey developments

New Lending, Credit and Finance Rules and Guidance issued by GFSC

The Lending, Credit and Finance Law (**LCF Law**) became fully operational on 1 July 2023 and creates a new licencing regime for, inter alia, consumer lenders, financial firm businesses, virtual asset service providers (**VASPs**) and persons operating crowdfunding or peer-to-peer platforms.

All persons performing a regulated activity under the LCF Law should now have applied for a licence, unless exempt. The LCF Law has also repealed the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 as from 1 July 2023.

The Guernsey Financial Services Commission (**GFSC**) has, in support of the LCF Law, issued the new Lending, Credit and Finance Rules and Guidance (**LCF Rules**) and a section 40 notice of exemptions (**Section 40 Exemptions**), which was updated and expanded on 23 June 2023 and provides various exemptions under the LCF Law for persons that would otherwise be required to be licensed. 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. Here are the [amended Section 40 Exemptions](#).

In addition, the GFSC has amended the Finance Sector Code of Corporate Governance to also apply to licensees under the LCF Law. The GFSC has also updated its Handbook on Countering Financial Crime and Terrorist Financing (**Handbook**) to cover VASPs and other licensees regulated under the LCF Law which applies from 10 July 2023.

Up to six directorship registration regime

The GFSC issued a final form guidance on 2 October 2023 for individuals using the up to "six directorships exemption" for fiduciary licensing under the Regulation of Fiduciaries, Administration Businesses, Directors etc. (Bailiwick of Guernsey) Law, 2020 (**Fiduciaries Law**). These individuals were required to register with the GFSC by 1 October 2023.

The "six directorship exemption" entails the exemption granted from the need to obtain a personal fiduciaries licence under the Fiduciaries Law where an individual is acting as a director of six or

fewer companies (where no other statutory exemptions under the Fiduciaries Law apply).

Such directors will be subject to a reduced set of anti-money laundering and counter terrorist financing obligations (together, **AML/CFT**). This guidance applies to "registered directors" only, namely individuals registered under Schedule 5 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (**POC Law**). Read a [copy of the guidance](#).

Review of commercial laws administered by the Guernsey Registrar of Companies

Following the approval of a policy letter by the States of Guernsey on 19 July 2023, it has been proposed that various laws administered by the Guernsey Registrar of Companies (**Registrar**) be amended in order to achieve consistency in both legislation and practice and introduce more clarity, simplicity and uniformity in the oversight of legal persons administered by the Registrar.

These changes come in anticipation of the next evaluation of the Bailiwick by the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (**MONEYVAL**), particularly with respect to Financial Action Task Force (**FATF**) recommendation 24 on the transparency and beneficial ownership of legal persons and recommendation 40 on international co-operation. Certain amendments are already in effect, while others are expected to be effective later this year and others are subject to Privy Council approval.

The proposed amendments are categorised into the following five areas: (i) filing and record keeping, (ii) the Registrar's functions, (iii) enforcement measures, (iv) information gathering and sharing powers and (v) new offences and civil penalties.

The laws that are subject to amendments are the Companies (Guernsey) Law, 2008, the Limited Partnerships (Guernsey) Law, the Limited Liability Partnerships (Guernsey) Law, 2013, the Foundations (Guernsey) Law, 2012, the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 and the Charities etc. (Guernsey and Alderney) Ordinance, 2021.

Thematic review - risks posed by PEPs

The GFSC has issued its report on the thematic review of the effectiveness of firms' monitoring of, and compliance with, the requirements for managing the risks posed by politically exposed persons (**PEPs**) set out in the Handbook.

The GFSC concluded that, while it is mandatory to treat relationships with foreign PEPs as high risk, firms should ensure that their risk methodology differentiates between foreign PEPs and domestic PEPs as the type and extent of risk present will be different, and therefore enhanced client due diligence requests (pursuant to the Handbook) may not be appropriate for a domestic PEP.

The results of the thematic review showed that the controls employed by firms to mitigate PEP risk were effective, with only three of the 30 firms requiring risk mitigation programmes to remediate identified issues. The GFSC further noted many examples of good practice, and said it was encouraging to note the strong performance by fiduciaries specifically in regard to the risk assessment of PEPs. This was said to be likely due to the nature and complexity of fiduciary service offerings which allow for a deeper understanding of the risks present in a relationship. Nevertheless, six areas for improvement were identified where firms could improve their policies, procedures and controls. In summary, they are as follows:

- identification of PEP positions which it would consider to expose the firm to foreign and international organisation PEP risk
- identification of close associates
- tailoring firm specific policies and procedures and not just copy sections from the Handbook
- adequately conducting PEP risk assessment
- establishing source of wealth and source of funds
- sufficient management information should be collected in specific detail as to the PEP risk the firm is exposed to.

Read a [copy of the thematic review](#).

Further amendments to the Handbook

In addition to the updates made to the Handbook regarding VASPs (discussed above) and those mentioned in [our previous quarterly update](#), the Handbook was furthermore updated to set a new requirement for specified businesses (businesses licenced under any of the Guernsey regulatory laws) or prescribed businesses (such as law firms, accounting firms and estate agents).

Specified and prescribed businesses are required to establish and maintain an independent compliance audit function in order to evaluate the adequacy and effectiveness of its AML/CFT policies, procedures and controls in line with schedule 3 of the POC Law and the Handbook. Such independent audit function may be performed by an employee of the firm, however that employee should be independent from the firm's employees who apply its policies, procedures and controls. A firm may also utilise the services of an external services provider to fulfil the independent audit function.

In such case, when considering the suitability of the proposed external party, the firm will need to apply the principles in the outsourcing guidance note issued by the GFSC as referenced in section 2.5 of the Handbook. The GFSC has also updated Appendix I of the Handbook which lists jurisdictions identified by external sources as presenting higher risk of money laundering and

terrorist financing reflecting the FATF's updated list of jurisdictions under increased monitoring. These jurisdictions include Cameroon, Croatia, Vietnam. Some of the other sources used in the compilation of Appendix I have updated their assessments which have led to the addition of Chile, Curacao, Macau and Kazakhstan and removal of Belize, Kiribati, Morocco and Rwanda.

Unclaimed client money of investment schemes

A thematic review was undertaken by the GFSC in order to gain a better understanding of the value of unclaimed and unallocated monies in the collective investment scheme (CIS) industry in Guernsey, specifically how these monies are dealt with by the relevant parties.

The GFSC identified that:

- as a proportion of the CIS industry's overall net asset value, unclaimed money does not represent a significant percentage. However, it is recognised that the scope of the thematic review did not include surrendered investment schemes where, for example, all monies other than unclaimed monies may have been distributed. Further, while industry-wide the total unclaimed money figure is proportionately small, it may not be small for the individual investors involved
- unclaimed money appears to be a more prevalent issue with open-ended, older CISs
- clear provisions within the CISs constitutional documents regarding the handling of unclaimed money makes administration and the decision-making process considerably easier
- unclaimed money is not dealt with in a consistent manner within the CIS industry which may be a result of limited guidance and rules relating to this issue

The GFSC will consider issuing a consultation paper in due course which will seek the industry's views on key points which may be covered in any future guidance or rules. Read a [copy of the thematic review](#).

Russia sanctions notice - general licence in relation to investment funds

The Policy and Resources Committee has issued a general licence under regulation 64 of the Russia (Sanctions) (EU Exit) Regulations 2019, as implemented and modified in the Bailiwick by the Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020 (the **Russia Regulations**) which permits certain dealings with regards to a "Relevant Investment Fund" (as defined in the general licence) with certain Russian connections or affiliations that would otherwise not be permitted under the Russia Regulations.

For the avoidance of doubt, the permissions in this general licence apply for the purposes of regulations 11 to 15 of Russia Regulations only. Pre-notification to the Policy and Resources Committee of the intention to rely on this general licence is required before an activity may be

carried out, followed by monthly reporting setting out details of any such activity carried out in the preceding month. This general licence will expire on 20 September 2024 - read a [copy of the general licence](#).

Recent news and insights

Jersey: a home for private equity fund managers

The potential uncertainties surrounding the tax treatment of carried interest in onshore jurisdictions, coupled with the need to demonstrate economic substance for fund managers, is driving private equity managers to establish a physical presence in Jersey. Ogier partners Jonathan Hughes and Emily Haithwaite set out the issues and the solutions that Ogier's combined legal and fiduciary services platform can offer private equity fund managers.

Ogier Guernsey advises Air Street Capital on the establishment of its second AI fund

Ogier's Investment Funds team in Guernsey has advised on the establishment and final closing of Air Street Fund II, an approximately US\$121 million fund focused on backing artificial intelligence-first companies.

About Ogier

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