



Channel Islands Funds Update: Q4 2023

Newsletters - 10/01/2024

In our latest Channel Islands Funds Update, we round up recent legal and regulatory developments in Jersey and Guernsey.

View our newsletter online.

Pan-island developments

Joint governmental commitment in relation to beneficial ownership registers

The governments of Guernsey and Jersey, together with that of the Isle of Man, have reiterated their commitment to transparency in beneficial ownership information.

As advised in our [Q4 2022 update](#), although the islands had previously each confirmed their commitment to transparency in line with international standards, these plans had been paused temporarily given the judgement of the Court of Justice of the European Union in November 2022 which cast doubt on the legality of public access to beneficial ownership information.

In the meantime, the islands have undertaken substantial preparatory work to enable access by "obliged entities" (financial services businesses and certain others required to conduct customer due diligence for anti-money laundering, counter terrorist financing and counter proliferation financing purposes), and have satisfied themselves that this access is possible. Obligated entity access will therefore be delivered during 2024, with appropriate safeguards to protect privacy rights.

The islands will also develop and deliver legitimate interest access in a leading timeframe, though the statement recognises that jurisdictions across Europe are grappling with the definition of "legitimate interest". The governments intend to have regard to international good practice (including that set out in the EU's Sixth Anti-Money Laundering Directive, which is expected to be finalised early this year).

As such, proposals to enable legitimate interest access to beneficial ownership registers are expected to be lodged with each island's parliament by the end of 2024.

You can read the joint statement: [Joint commitment by Guernsey, the Isle of Man and Jersey: Registers of beneficial ownership of companies \(gov.je\)](#)

Jersey developments

Increases in private and public fund numbers and NAV

The latest Jersey Finance statistics show increases during Q3 2023 in both private (Jersey Private Fund) and regulated public collective investment funds.

As at the end of the quarter, there were 664 Jersey Private Funds (**JPFs**) registered (increased from 645 at the end of Q2) and 638 regulated collective investment funds (**CIFs**) (increased from 626 in the same period).

This healthy growth is also reflected in an increase in the net asset value of regulated funds under administration, which increased from £440 billion to £457.8 billion during the quarter.

Read the full [Q3 statistics from Jersey Finance](#).

Financial Services Law amendments

As highlighted in [our Q3 2023 update](#), the Financial Services (Jersey) Law 1998 has been amended to introduce two further forms of "investment business":

- arranging for another person to deal in investments (limited to retail investors)
- operating an investment exchange.

Corresponding amendments have also been made to expand the scope of existing investment business exemptions, which will continue to apply. These include the well-known "professional investor regulated scheme" exemption.

The definition of "investments" has also been updated to better align with the MiFID II definition.

The changes entered into force on 31 October 2023, with a six-month transitional period for businesses now in scope.

PEPs the focus for JFSC's Q1/Q2 thematic examination

The JFSC's first thematic examination of 2024 will focus on politically exposed persons (**PEPs**). Supervised persons are expected to have been notified if they have been selected for review.

The examinations will cover certain key topics relating to the risks associated with PEPs, due diligence and screening and ongoing monitoring plans, among others. These will include evaluations of related

aspects of supervised persons' business risk assessments, policies and procedures and training.

Read more about the [JFSC's planned examinations](#).

Revised outsourcing policy now in force

The JFSC's revised outsourcing policy is now in force.

Although the definition of outsourcing hasn't fundamentally changed, the scope of the policy has been extended, notably to include Schedule 2 supervised persons.

For more detail on the changes, see our briefing: [New JFSC Outsourcing Policy: overview, impact and actions required](#).

JFSC updates MoME guidance note

The JFSC has brought its guidance note on the "manager of a managed entity" (**MoME**) regime up to date, reflecting the various updates to the Fund Services Business Code of Practice (the **FSB Code**) since the MoME guidance note was published in 2009.

The guidance note also includes updated guidance on complying with the core principles of the FSB Code (in particular regarding insurance requirements), which should be reviewed by managed entities.

View the revised guidance note: [Manager of a managed entity and certain managed entities — Jersey Financial Services Commission](#).

More applications move to myJFSC portal

Further applications can now be made via the online myJFSC portal, as detailed by the JFSC in this briefing: [FS\(J\)L / CIF Material Change application form](#). The FS(J)L / CIF Material Change form allows a number of material changes relating to fund services business and collective investment funds to be notified online (including, among others, changes of ownership and control, changes of service provider and cessation of business plans).

Submission of employee returns for regulated investment businesses has also moved online.

Guernsey developments

Surrender of the authorisation or registration of collective investment schemes

In November 2023 the Guernsey Financial Services Commission (**GFSC**) published an explanatory note regarding the surrender of the authorisation or registration of collective investment schemes to clarify the circumstances under which the GFSC will consider granting consent to the surrender of a scheme's

authorisation or registration, as required under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (as amended) (the **POI Law**).

Under section 11 of the POI Law, the designated administrator or designated trustee/custodian of a scheme may surrender the scheme's authorisation or registration by notice served upon the GFSC. Such a surrender is not effective unless prior written consent to the surrender has been obtained from the GFSC.

The GFSC may refuse its consent to the surrender under various circumstances including (i) if, in the opinion of the GFSC, the liabilities of the scheme have not been discharged or transferred or (ii) if the GFSC believes that the surrender would not be in the interests of the public or the reputation of the Bailiwick as a finance centre.

The GFSC will typically consent to a request to surrender the authorisation or registration of a scheme when it has received evidence that the liquidation or winding up of such scheme is fully complete and there are no residual or outstanding or regulatory concern.

Where a scheme has undergone a formal liquidation and that process is complete, a copy of the liquidator's final statements should be included with any request to consent to the surrender of the scheme's authorisation or registration, to demonstrate that the liquidation is complete. These should evidence that all assets have been sold, all liabilities settled, and remaining monies have been fully distributed to investors, and no contingent assets or contingent liabilities remain.

Where a scheme has not formally entered liquidation but has instead been subject to a managed wind down, and that process has been completed, a request to consent to the surrender of the authorisation or registration should be accompanied by a suitable declaration from the scheme's designated administrator. Such declaration should confirm that all assets have been sold, all liabilities settled, and remaining monies have been fully distributed to investors, and no contingent assets or contingent liabilities remain. The GFSC may seek further evidence to support such a declaration if considered necessary.

Notwithstanding the above, there are other circumstances under which the GFSC will be prepared to consider (without prejudice to the outcome of that consideration) a request for consent to the surrender of a scheme's authorisation or registration, once a scheme has entered liquidation or dissolution, but prior to the completion of those processes.

Total net asset value of Guernsey funds grows in Q3 2023

Third quarter 2023 investment statistics released by the GFSC show that the total net asset value of Guernsey funds was £288.8 billion, which was an increase over the quarter of £2.8 billion.

Within these totals, Guernsey closed-ended funds increased over the quarter by just under £2.4 billion to £239.4 billion. The Guernsey-domiciled open-ended sector increased over the quarter by just under

£0.5 billion to £49.4 billion.

Within these totals for Guernsey funds, Guernsey Green Funds held a total net asset value of £5.5 billion at the end of the quarter.

GFSC fees for 2024

The GFSC plans to increase licence fees paid by firms from 1 January 2024 by 6.3% (which is 1% less than the figure upon it consulted).

On 26 July 2023, the GFSC issued a consultation paper on the fee rates and administrative penalties to apply from 1 January 2024 which contained the following proposals:

- an overall proposed increase in fees of 7.3%, with the exception of fees introduced in 2023
- a rebalancing of fees within the insurance sector on request of the industry body with an aim to provide greater comparability with other jurisdictions
- an increase in the regulatory fee for operating an investment exchange within the Bailiwick of Guernsey
- an update to the fees for virtual asset service providers (**VASPs**) within an Actively Managed Certificate structure.

The consultation period ran for eight weeks, up to 20 September 2023, and given the current inflationary environment, there was little opposition to the GFSC's proposed increases.

Since the GFSC issued its consultation, a more recent inflation figure has been released by the States of Guernsey showing a small decrease in the overall rate of inflation to 7% RPI. Taking this into account, together with its anticipated funding needs in the next year, the state of its reserves, its likely 2023 end year financial outturn and the likely economic environment in 2024, the GFSC has decided to proceed with an increase lower than the figure on which it originally consulted.

Distribution of annual fee invoices

The GFSC will be distributing its 2024 annual fee invoices in January 2024 using the generic email addresses that it holds on record for each licensee and registrant.

Invoices emailed from the GFSC will carry the GFSC logo, but will be distributed by Quickbooks (a product of Intuit, its invoicing service provider). These emails will contain an attached invoice and a link to a portal hosted by Intuit, giving further detail on the invoice to be paid and the payment status. One email will be sent out per invoice.

The GFSC has published an [FAQ on what to expect from the annual fee process](#), including what licensees should do to ensure they receive their invoices in a timely manner.

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