

Guernsey legal and regulatory update

A brief overview of Guernsey legislative and regulatory developments
March 2018 to June 2018 inclusive

1 Revision of regulatory laws project

The Guernsey Financial Services Commission's (the **Commission**) consultations on the draft Protection of Investors (Bailiwick of Guernsey) Law, 2018 and the draft Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2018 have now both closed. However the consultation on the definitions which are proposed to be used across all of the regulatory laws remains open until 30 June 2018.

2 Potential amendments to the Companies Law

More recently, the States of Guernsey's Committee for Economic Development has issued a consultation on proposed amendments to the Companies (Guernsey) Law, 2008 (the **Companies Law**). The Companies Law has been under review since its implementation in 2008 to ensure that it continues to meet the demands of the current business climate and acts in response to industry feedback and developments in other jurisdictions and amendments were made in 2015. While the consultation closed on 15 June 2018, the paper is still available [here](#), the results of which are due to be published in September 2018.

3 Code of Market Conduct

A draft Code of Market Conduct (the **Code**) has been released by the Commission for consultation. The Commission is seeking feedback on the structure of the Code and more particularly whether there are any specific markets which the Code should identify, the rules and regulations of which the Royal Court may consider should the relevant activity occur on such a market. The Code is relevant to those seeking guidance as to whether or not behaviour amounts to market abuse, albeit it does not exhaustively describe all factors to be taken into account in determining whether behaviour amounts to market abuse. Under section 41A(5) of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 behaviour will fall within the scope of the Code if it occurs in the Bailiwick or, in relation to qualifying investments traded on a regulated market which is situated in the Bailiwick or which is accessible electronically in the Bailiwick, for example the London Stock Exchange or the New York Stock Exchange. The consultation has closed (12 June 2018) but the draft Code is still available [here](#).

4 Update to PIF Rules

The Commission has issued new FAQs on Private Investment Funds (**PIF**) and has reissued the PIF Form, both of which are available [here](#). The FAQs clarify the PIF regime; in particular, a licensed manager's responsibilities and the requirement for an affirmation on the investors' ability to assume loss (which replaces the former more burdensome requirement for a warranty). The declaration is not considered by the Commission to be an onerous or unreasonable prerequisite on the basis that the PIF regime assumes a close relationship between investors and management, albeit the Commission acknowledges that the affirmation can only fall at the time the subscription is made.

The FAQs can be accessed [here](#).

5 Regulatory change of control

The Commission has released sector specific guidance together with new application forms in relation to notifications of change of controller [here](#). The intention is to assist applicants with the notification process and to ensure that all relevant information is provided in one consolidated submission to help expedite the review process.

Of particular note **for the investment sector**:

- The Commission has 60 days on receipt of a fully completed application to respond. However this period can be paused if the Commission has further questions or requires further information. Moreover, if the Commission does not receive a response to those further questions within three months of the request, it may archive the application and require a new application should the change of control proceed.
- An applicant has three months following a successful application to complete the change of controller after which time the Commission's statement of no objection will lapse and a further application would be required (unless approval is granted for an extension).
- Should the change of controller result in an entirely different business model, systems and controls, the Commission may request the submission of a new licence application.
- The Commission's guidance clarifies that a change of controller application is not required in respect of a change of managing director or chief executive of a company, or of any company that is a subsidiary, but those individuals are required to complete and submit an online Form PQ and Appointment Form.

6 Guernsey Green Fund

The Commission has issued a consultation (now closed) on its proposals to introduce a new investment product, namely the Guernsey Green Fund (GGF) which is intended to cater for the development of informed green investments.

A GGF will be governed by the **GGF Rules** which are aimed to give assurance to investors that their investments are for environmental purposes, that are established and monitored against a reliable set of standards developed by international financial institutions with the appropriate scientific background. The GGF Rules have been structured to encourage all types of funds to apply for a GGF designation if they fall within the green bracket and as such any type of fund can apply, whether authorised or registered, open- or closed-ended, provided that it meets the criteria required by the GGF Rules.

To comply with the GGF Rules, 75 per cent of investments in the GGF must be held in accordance with the green criteria set out in the schedule to the GGF Rules (the **Principles**). There are a number of categories within the Principles which green investments must fall into, examples of which include renewable energy; energy efficiency; agriculture, forestry and land use; non-energy greenhouse gas reductions; and transport. Under each category is a list of activities which give an indication as to the type of assets which may be held in a GGF. The remaining 25 per cent of investments of the GGF must not be invested in a way which would reduce its objective of mitigating climate change or which would constitute an investment in any of the activities within the Commission's exclusion policy.

Application will vary according to the type of fund that applies. For new funds, the usual timeframes apply depending on whether it is applying through the authorised or fast track route and up to five days will be taken to process the GGF application. The application fees for authorisation or registration (as the case may be), still apply together with a £500 administration fee in respect of the GGF application (which will not be levied until next year).

A copy of the consultation and draft GGF Rules is available on the Commission's website [here](#).

7 GDPR

The Data Protection (Bailiwick of Guernsey) Law, 2017 (the **DP Law**) is now in force (effective 25 May 2018) replacing the (former) 2001 law. The DP Law is local legislation equivalent to European Union legislation, the General Data Protection Regulation (**GDPR**) which came into force for European Member States on the same date, and ensures protection of Guernsey's adequacy status with the European Commission. The DP Law, which applies to the processing of personal data, places obligations on controllers and processors and provides rights to data subjects. There is a transitional period of one year which provides additional time to

meet the new standards however it is limited in its application, ie it only applies to certain duties under the DP Law.

Funds and their directors should be aware of the need to send privacy notices to individual data subjects including investors where applicable and to ensure their fund service providers have sufficient safeguards and processes in place for the proper protection of relevant data. For further information, refer to our client update [here](#).

The Office of the Data Protection Commissioner also has valuable guidance and resources on its website [here](#).

8 MoU with Bank of England

The Commission has signed a Memorandum of Undertaking (**MoU**) with the Bank of England reaffirming its long-standing relationship dating back to the Financial Services Authority (FSA), now the Prudential Regulation Authority (PRA) responsible for the prudential regulation and supervision of banks, insurers and major investment firms. Under the MoU, both parties may share confidential information about regulated entities and formally co-operate on other supervisory activities.

9 EU Code of Conduct Group

As part of the ongoing negotiations between the EU Code of Conduct Group (**COCG**) and the Crown Dependencies regarding substance requirements for companies residents there, the COCG has published a report to the EU Council. The report has been largely welcomed in that it seeks to align its substance requirements with those of the OECD's BEPS Action 5 on Harmful Tax Practices, rather than set its own criteria, in addition to providing an indication of the likely manner in which substance requirements will be evaluated. The Crown Dependencies will now need to consult with industry locally and consider whether any legislative changes are required.

A copy of the report is available [here](#).

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