

UPDATE

# Guernsey legal and regulatory update

An overview of Guernsey legislative and regulatory developments  
July to 30 September 2019 inclusive

## 1 Substance – economic substance regimes receive OECD support

The Organisation for Economic Co-operation and Development (OECD) has concluded a review of recent economic substance changes to the tax regimes and legislation in each of the BVI, Cayman, Guernsey and Jersey and has confirmed that the domestic legal frameworks in each jurisdiction are in line with the relevant standard and are therefore 'not harmful'.

These latest positive endorsements follow the introduction of new economic substance legislation by the relevant authorities in each of those jurisdictions last year.

The States of Guernsey's public statement is available [here](#).

## 2 Substance – tax exempt companies

The proposal to further amend the economic substance legislation (the **Substance Regulations**) has been implemented so that a Guernsey tax exempt company (excluding funds) is now in scope and may therefore be subject to economic substance requirements, ie if it receives income arising from a 'relevant activity' or 'specified business' for the purposes of the Substance Regulations. This means that, while funds regulated by the Guernsey Financial Services Commission (the **Commission**) under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 continue to be out of scope, a Guernsey tax exempt subsidiary of such a fund will be in scope.

Other changes to the Substance Regulations include (i) the requirement that non-Guernsey and non-Alderney companies which are 'pure equity holding companies' but tax resident in Guernsey are required to comply with the companies law of their respective jurisdiction of incorporation and (ii) clarification that the core income generating activities for companies with income from IP assets should be linked to the nature of the IP asset.

Companies are advised to consider the effect of these latest changes to establish whether previously out of scope Guernsey tax exempt companies are now in scope and, if so, ensure that they comply with the economic substance requirements.

## 3 Data Protection – public reprimand

The Office of the Data Protection Authority (ODPA) in Guernsey has issued a public reprimand to the States Policy & Resources Committee for breaching the Data Protection (Bailiwick of Guernsey) Law, 2017 (the **DP Law**) in relation to the disclosure of an employee's health status (special category data) to several recipients.

This is the first example of a public reprimand issued under the DP Law and marks the first instance of enforcement action being taken under the DP Law as a matter of public record. To read more, click [here](#).

In other news, the ODPA has confirmed that 50 personal data breaches were reported in the two months up to 25 June 2019, but the ODPA has not yet released a detailed report on the breaches.

The European Data Protection Board and the European Data Protection Supervisor published a report on 12 July 2019 highlighting a potential conflict between the US CLOUD Act and the EU's data protection framework. The report advised that US authorities cannot legally rely on the CLOUD Act alone to force an entity in the Bailiwick of Guernsey to disclose a person's data. The disclosure must be handled in accordance with local data protection law. In view of this, the ODPa has highlighted the importance for organisations to identify whether any request received is a lawful request before divulging any information.

#### **4 Global Financial Innovation Network (GFiN)**

GFiN has published a report ([here](#)) providing an insight into the key achievements that have underpinned its establishment, the challenges it has encountered over the last year and its future objectives.

GFiN is a network of international regulators and related organisations committed to supporting financial innovation. It has grown from an initial membership of 12 (the Commission being one of the founding members) to 35 financial services regulators and seven observers, including the IMF and the World Bank Group and continues to evolve.

The aim of GFiN is to provide a more efficient way for innovative firms to interact with regulators worldwide and also to create a new framework for co-operation between financial services regulators on innovation related topics, sharing different experiences and approaches. GFiN has been clear in that its focus would not be to 'replicate any of the global standard setting bodies' but 'build on and complement the work the standard setting bodies were undertaking through targeted engagement'.

#### **5 Q2 investment statistics see a positive increase**

The second quarter investment statistics released by the Commission show the net asset value of total funds under management and administration in Guernsey has increased by £16 billion, an increase of 5.5 per cent.

Total net asset values have increased by 7.1 per cent, ie £20 billion, over the past year. The statistics are available [here](#).

#### **6 Guernsey's membership of NGFS**

Guernsey is the first island International Finance Centre (IFC) to become a member of the Network for Greening the Financial System (NGFS) joining some 42 members, which include German, Dutch and French central banks. The Commission considers this to be a move consistent with the international engagement element of Guernsey's green finance strategy and gives Guernsey the opportunity to highlight the important contributions that IFCs can make.

The NGFS was established by eight central banks and supervisors in 2017 following the 'One Planet Summit' in Paris to 'help strengthen the global response required to meet the goals of the Paris agreement'. Read more [here](#).

#### **7 Green insurance – feedback on consultation**

The Commission has issued a feedback statement (the **Statement**) on its discussion paper concerning the development of green insurance in Guernsey. The Statement sets out the responses received (which were generally supportive) together with the Commission's proposed next steps.

The full Statement is available [here](#).

#### **8 Regulatory enforcement**

The Commission has issued a public statement concerning the failure to meet the minimum criteria for licensing under Guernsey's regulatory laws. The Commission's investigation focussed on the offer to carry out company formation service and undertaking the regulated business of company administration, without having the appropriate licence. For further details, click [here](#).

## Contacts

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