

Guernsey legal and regulatory update

An overview of Guernsey legislative and regulatory developments
19 February 2022 to 31 May 2022

1 Natural Capital Fund – consultation

This is the first of two consultations issued by the Guernsey Financial Services Commission (the **Commission**) in relation to enhancing sustainable finance in the Bailiwick of Guernsey (the **Bailiwick**).

This particular consultation sets out proposals for the introduction of a 'Natural Capital Fund' designation applicable to registered and/or authorised funds that are committed to making 'nature-positive investments'. A nature-positive investment is one with an objective to contribute positively to and/or significantly reduce the harm done to the natural world.

Together with the Guernsey Green Fund, this new designation would allow Guernsey funds a choice of complementary sustainability designations based on globally agreed environmental standards.

The consultation, which includes the draft Natural Capital Fund Rules, closes on **4 July 2022** and is available [here](#).

2 Anti-greenwashing – consultation

The second consultation issued by the Commission concerns proposals to enhance levels of confidence in the Bailiwick's regulatory and supervisory framework for investment firms and funds by reinforcing the Commission's expectations relating to disclosure requirements in order to help mitigate the potential risks of 'greenwashing' (the term used to refer to the practice of misrepresenting sustainability-related practices or the sustainability related features of investment products).

Industry feedback is sought on the Commission's proposals to:

- issue guidance under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 (the **POI Law**) setting out its wider expectations regarding the transparency of environmental sustainability related claims and statements made in respect of Guernsey registered and/or authorised funds; and
- issue additional guidance to the Licensees (Conduct of Business) Rules and Guidance, 2021 clarifying the Commission's expectations in respect of promotion and advertising by persons licensed under the POI Law, particularly in relation to avoiding the risks of greenwashing.

The consultation, which also closes on **4 July 2022**, is available [here](#).

3 Commission's new membership

The Commission has become a member of the Taskforce on Nature-related Financial Disclosure (TNFD) Forum. As a member of the TNFD Forum the Commission will have greater insight into global developments within nature finance and ensure an enabling framework in the Bailiwick for firms that wish to become more active in sustainable finance.

Read the Commission's announcement [here](#).

4 Financial sanctions compliance

The Commission has released a report on its thematic review undertaken in 2021 on licensees' effectiveness in monitoring and compliance with targeted financial sanctions. The results reflect the Bailiwick's commitment to preventing the abuse of its financial services sector and to meeting established international standards for preventing financial crime. The effectiveness testing was extensive, with those subject to the testing being responsible for over 260,000 business relationships, with the banks tested responsible for 99.8% of inward transactions and 99.6% of outward transactions in and out of the Bailiwick during 2021.

According to the report, the sanctions screening systems of those firms tested are effective, with only a small minority of firms being made subject to risk mitigation programmes set by the Commission.

Full details of the report are available [here](#).

5 Sanctions and cyber risks

Specifically in light of the war in Ukraine, applications involving individuals, entities or investments connected with Russia are now ineligible for any of the Commission's fast-track regimes, and any such application must be accompanied by reputable legal advice confirming that the individuals and entities involved have no connection with sanctioned individuals and entities.

Further, firms are asked to ensure that they are familiar with the Commission's Cyber Rules and Guidance, 2021 ([here](#)) and in particular, have appropriate cyber security software, implement IT updates swiftly and encourage staff to exercise caution in emails and when on websites.

6 Investment statistics

The investment statistics for **Quarter 4 2021** ([here](#)) show that the total net asset value of Guernsey funds increased during the previous quarter by £13.6 billion (4.7%) to £303.6 billion, broken down as follows:

- Guernsey domiciled open-ended funds increased by £2.3 billion (4.4%) to £54.5 billion (representing an increase of £5.5 billion (11.3%) in the past year);
- Guernsey closed-ended sector increased by £11.3 billion (4.8%) to £249.1 billion (representing an increase of £52.6 billion (26.8%) in the past year); and
- Guernsey Green Funds held a total net asset value of £4.4 billion at the end of the quarter.

The investment statistics for **Quarter 1 2022** ([here](#)) show that the total net asset value of Guernsey funds has increased during the previous quarter by £6.0 billion (2.0%) to £309.6 billion, broken down as follows:

- Guernsey domiciled open-ended funds decreased over the quarter by £0.1 billion (-0.2%) to £54.4 billion (representing an increase of £6.4 billion (13.3%) in the past year);
- Guernsey closed-ended sector increased over the quarter by £6.1 billion (2.4%) to £255.2 billion (representing an increase of £39.5 billion (18.3%) in the past year); and
- Guernsey Green Funds held a total net asset value of £4.9 billion at the end of the quarter.

7 FATCA/CRS Reporting – reporting deadlines

The Association of Investment Companies (AIC) has issued guidance entitled 'FATCA and CRS compliance for Guernsey investment companies' dated March 2022 in light of the Income Tax (Guernsey) Amendment Ordinance, 2021 (the **2021 Ordinance**) which gives the Guernsey Revenue Service the ability to issue a financial institution with a freezing order in respect of financial accounts where the requisite self-certification has not been obtained or is believed to be incorrect. For further information read the GSCCA Circular [here](#). Whilst it is expected that a freezing order is intended to be a measure of last resort, the guidance suggests that investment companies may wish to consider amending their articles of incorporation (**Articles**) to secure greater ability to enforce FATCA and CRS compliance and avoid any imposition of a freezing order.

Example amendments to the Articles include:

- not to register the transfer of certificated shares if a valid tax identification number (**TIN**) has not been received;

- compulsory transfer of existing shares on the register after a specified period where a valid TIN has not been received;
- payment of a dividend into an escrow account for certificated shares without a TIN pending receipt of the TIN; and
- amending existing provisions excluding US investors to include reference to FATCA (however it may also be necessary to amend the Articles to ensure CRS compliance).

Please do not hesitate to contact us if you would like to discuss this.

8 TISE – news

A report published by an investment research consultancy ([here](#)) confirms that the International Stock Exchange (**TISE**) had strong growth in 2021 which continues into 2022 with 268 newly listed securities in the first quarter, representing 19% growth on the previous record set in 2021.

In other news, TISE has launched its new bespoke auction trading system, NOVA with the first auctions having already taken place. This new auction platform provides an automated price discovery and transaction model which is an attractive addition to the equity market. Further details [here](#).

9 Data protection – news

The deadline for local businesses that handle personal data to register or renew their existing registration with the Office of Data Protection (**ODPA**) has passed (28 February 2022).

In other news, latest breach statistics reveal that:

- 27 personal data breaches were reported during January and February 2022, the majority of which were due to personal data being sent to the wrong person by email and post (further details [here](#)); and
- 26 personal data breaches reported during March and April 2022, 11 of which occurred via email, an ongoing trend and which remains the most common type of breach reported (further details [here](#)).

The ODPA's published statistics now also provide the outcome for each breach, ie personal data sent to the wrong person by email resulted in disclosure of that personal data.

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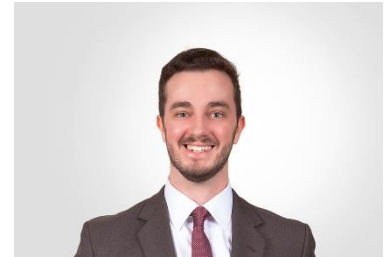
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