

Guernsey funds legal and regulatory update

An overview of Guernsey legislative and regulatory developments relevant to investment funds for the period 1 June to 31 August 2023 inclusive

1 'Up to six-directorships' exemption – update

The States of Guernsey has approved changes effecting individual directors who rely on the 'up to six-directorships' exemption under the Regulation of Fiduciaries, Administration Businesses, Directors etc. (Bailiwick of Guernsey) Law, 2020. Individual directors relying on this exemption are now required to register with Guernsey Financial Services Commission (the **Commission**) by 1 October 2023. Registration will bring them within the ambit of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999. Alongside other new categories of exemption, specific exemptions have been identified for directors of companies that are connected to registered and authorised collective investment schemes (CIS) where: (A) the connected company is administered by the designated administrator of the CIS and itself subject to AML/CFT requirements with which the designated administrator is responsible to ensure compliance; or (B) the director of the connected company is an individual and acts as the director of, or the director of the general partner of, the CIS.

Simultaneously, a new and simplified framework tailored for individuals relying on the six-directorships exemption has been introduced which clarifies the scope of their AML/CFT obligations.

The Commission has published guidance on the new director registration process ([here](#)), further details can be found in our separate update ([here](#)) and Guidance on a registered director's AML/CFT obligations ([here](#)).

2 Administered Entity changes – update

Following industry consultation, the States of Guernsey has approved a policy letter setting out a series of proposed amendments to several pieces of legislation administered by the Guernsey Registry (including the Companies (Guernsey) Law, 2008, the Limited Partnerships (Guernsey) Law, 1995 and the Limited Liability Partnerships (Guernsey) Law, 2013).

The amendments, driven partly by the forthcoming MONEYVAL inspection, are intended to provide greater consistency of information available to the Registry and greater clarity and uniformity in the oversight of the legal entities it administers, whilst also harmonising its enforcement measures and information gathering and sharing powers across the Bailiwick's authorities. The amendments include changes to entity record keeping obligations, Registrar functions to obtain and disclose information, Registrar powers and checks on those powers, and disclosure of information by resident agents to specified authorities. New offences have been created and civil penalties revised.

Certain amendments are already in force, while others are expected to be effective later this year and others subject to Privy Council approval. Of particular relevance to LPs and LLPs will be the requirement to provide the Registrar with certain particulars regarding the governance provisions of their partnership agreements. The specific requirements are still subject to consultation but the expectation is that a standard form will be prescribed by the Registrar. The proposed commencement date of this requirement is 13 September 2023 (with a transitional period until 30 November 2023 for pre-existing LPs/LLPs).

Further details can be found in our separate update ([here](#)).

3 Lending credit and finance – update

The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the **LCF Law**) is now fully in force, effective from 1 July 2023 and the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 has been repealed.

Anyone conducting activities that are regulated under the LCF Law must be licensed to do so or rely on an appropriate exemption. Full details of exempt activities can be found in the Commission's Notice of Disapplication of Licensing Requirements ([here](#)).

The Commission has amended the Finance Sector Code of Corporate Governance to apply to firms licensed under the LCF Law ([here](#)).

We have various information available on our dedicated 'Lending, Credit and Finance Hub' ([here](#)), including most recently considerations for trustees and other fiduciaries under the LCF Law.

4 Collective Investment Scheme (CIS) – thematic review of unclaimed client money

The Commission has published its thematic review of unclaimed client money of CISs (the CIS Thematic) ([here](#)) which was undertaken to understand the value of unclaimed and unallocated monies in Guernsey's CIS sector and how these monies are dealt with by the relevant parties, primarily fund administrators, fund boards and liquidators.

The principal findings included that:

- unclaimed money does not represent a significant proportion of the overall net asset value of Guernsey's CIS sector;
- unclaimed money appears a more prevalent issue with open-ended older (pre-2017) CISs rather than newer closed-ended CISs; and
- clear provisions within the CIS' constitutional documents regarding the handling of unclaimed money makes administration and the decision making process considerably easier.

The Commission has indicated its intention to issue a consultation paper on new guidance or rules to address the findings of the thematic review, including taking into account the International Organisation of Security Commission's 2017 report on good practice for the termination of investment funds ([here](#)).

5 Investment statistics – Quarter 1 of 2023

The investment statistics for Quarter 1 of 2023 ([here](#)) show that the total net asset value of Guernsey funds stands at £288.7 billion, broken down as follows:

- Guernsey domiciled open-ended funds at £50.0 billion;
- Guernsey closed-ended at £238.7 billion; and
- Guernsey Green Funds held a total net asset value of £5.6 billion at the end of the Quarter 4.

Over the past year the net asset values have decreased by £20.9 billion (-6.8 per cent).

6 Politically Exposed Persons (PEPs) – thematic review on managing risk

The Commission has published its report on the thematic review of managing the risk posed by Politically Exposed Persons (the **PEP Thematic**) ([here](#)).

The PEP Thematic focuses on the effectiveness of banks, fiduciaries, fund administrators, insurers and lawyers in managing the risk posed by PEPs in accordance with the requirements set out in the Handbook on Countering Financial Crime and Terrorist Financing.

The PEP Thematic noted that in 2022, the total number of PEP relationships equates to just 1.4 per cent of total business relationships within the Bailiwick. The Commission undertook reviews of 30 firms across the sectors with the largest exposure to PEPs. The PEP Thematic concluded that controls employed by firms to mitigate risk were effective, but provided a summary of areas for improvement, which includes the following:

- policies and procedures should:
 - identify and document prominent public positions which may give rise to risk;

- identify close associates of PEPs and consideration of the risks they may pose; and
- be tailored to reflect a firm's specific PEP controls to mitigate its particular PEP risks.
- where a PEP relationship is identified:
 - the risk assessment should document the risks of the PEP's position to ensure sufficient mitigation is applied appropriate to the nature of the PEP relationship;
 - the source of wealth and funds assessment should include consideration of the risk posed by the PEP (eg the geographical sphere of the activities and the industry in which funds have been generated and if the sources are plausible); and
 - ensuring that information to senior management provides a full picture of the firm's PEP exposure.

The Commission will consider how firms have incorporated the findings from the PEP Thematic into their systems and controls as part of its ongoing supervision.

7 TISE - news

In July 2023, the International Stock Exchange (the **TISE**) announced the introduction of a complementary private market platform, **TISE Private Markets**, providing small and medium-sized enterprises (**SMEs**) and their investors with an alternative to traditional market infrastructure providers. TISE Private Markets offers SMEs a suite of trading, settlement and registry management services enabling funds to be transferred in an accelerated process.

Contacts



Darren Bacon
Partner | Advocate
Mourant Ozannes (Guernsey) LLP
Guernsey
+44 1481 731 503
darren.bacon@mourant.com



Frances Watson
Partner | Advocate
Mourant Ozannes (Guernsey) LLP
Guernsey
+44 1481 739 331
frances.watson@mourant.com



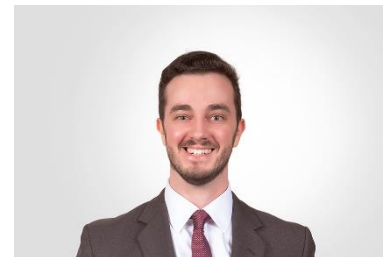
James Cousins
Solicitor (England & Wales) non-practising
Mourant Ozannes (Guernsey) LLP
+44 1481 739 329
james.cousins@mourant.com



Pui Yee Lai
Senior Legal Manager | Solicitor (England & Wales) non-practising
Mourant Ozannes (Guernsey) LLP
+852 995 5570
puiyee.lai@mourant.com



Gary Hall
Senior Associate | Solicitor (England & Wales) non-practising
Mourant Ozannes (Guernsey) LLP
+44 20 7796 7615
gary.hall@mourant.com



Alasdair McKenzie
Senior Associate | Solicitor (England & Wales) non-practising
Mourant Ozannes (Guernsey) LLP
+44 1481 731 506
alasdair.mckenzie@mourant.com



Lauren Ingrouille
Paralegal
Mourant Ozannes (Guernsey) LLP
+44 1481 739 340
lauren.ingrouille@mourant.com

This update is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at mourant.com. © 2023 MOURANT OZANNES ALL RIGHTS RESERVED