

# Guernsey funds legal and regulatory update

An overview of Guernsey legislative and regulatory developments relevant to investment funds for the period 1 September to 30 November 2023 inclusive

## 1 Registration of limited partnerships – update

The laws administered by the Guernsey Registry (the **Registry**), including the Companies (Guernsey) Law, 2008 and the Limited Partnerships (Guernsey) Law, 1995, have now been amended and are, in the main, in force (with the remaining amendments to become effective by **15 December 2023**).

These amendments, which are driven partly by the forthcoming MONEYVAL inspection, include a new provision that, from **15 December 2023**, applications for registration of limited partnerships with legal personality (**LP Incs**) will be required to file with the Registry particulars of their basic governing provisions (**particulars of governance**). Any LP Incs registered before **13 September 2023** must also submit their particulars of governance before **15 December 2023**. The Registry has issued a template for LP Incs to use when submitting their particulars of governance ([here](#)).

In addition, LP Incs (excluding open and closed ended collective investment schemes) are required to appoint (and notify the Registry) by **15 December 2023** a resident agent (an **RA**) who is either an individual, resident in Guernsey, who is a general partner of the LP Inc, or a corporate service provider in Guernsey. The RA's duties will include ascertaining and verifying the beneficial owners of the LP Inc and providing a statement to that effect to the Registrar of Beneficial Ownership, who maintains the non-public central register of beneficial ownership. The RA must also notify the Registrar of Beneficial Ownership if any general partner or beneficial owner fails to comply with a request to verify beneficial ownership or to ensure the records are kept up-to-date.

Failure to comply with these two new provisions is an offence for which a civil penalty may be imposed. Further, the Registrar of Companies may strike off an LP Inc if it fails to appoint an RA.

For a summary of the amendments refer to our Update [here](#).

## 2 Unregulated trustees and partners – new legal requirements

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 4) Ordinance 2023 ([here](#)), which came into force on **16 October 2023**, introduces new requirements for anybody who is:

- a trustee of a relevant trust or partner of a relevant partnership, ie a general partnership or a limited partnership without a legal personality (other than a limited partner in the case of a limited partnership), **and**
- in that capacity, is not licensed or authorised by the Guernsey Financial Services Commission (the **Commission**) under any of the supervisory laws.

In the case of a trust or relevant partnership established before **16 October 2023**, the requirements do not come into force until **31 December 2023**.

In summary, the new requirements include a requirement for the unregulated trustee or partner to:

- keep records for at least five years starting from the date of the dissolution or termination of the trust or partnership;

- disclose that the person is acting as a trustee or partner when carrying out business on behalf of the trust or partner, where the business involves financial services or related businesses as listed in Schedules 1 and 2 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;
- obtain and maintain information about parties to a trust or partnership; and
- obtain and maintain information about regulated agents or service providers.

The States of Guernsey Policy and Resources Committee has issued guidance ([here](#)) on the application and scope of the new requirements.

### 3 Investment statistics – Quarter 3 of 2023

The investment statistics for Quarter 3 of 2023 ([here](#)) show that the total net asset value of Guernsey funds stands at £288.8 billion (an increase of 1.0 per cent over the quarter), broken down as follows:

- Guernsey domiciled open-ended funds at £49.4 billion (+1.0 per cent)
- Guernsey closed-ended at £239.4 billion (+1.0 per cent), and
- Guernsey Green Funds held a total net asset value of £5.5 billion.

### 4 New corporate offences

The States of Guernsey (the **States**) has approved the Criminal Justice (Miscellaneous Amendments – Preventative Offences) (Bailiwick of Guernsey) Ordinance, 2023 (the **Ordinance**) ([here](#)), which creates new offences of failing to prevent the facilitation of tax evasion by employees and other persons acting on behalf of the relevant organisation.

As well as being a corporate offence, individuals acting in certain roles for the relevant body (such as directors, managers, senior officers, partners, and foundation officials) and third parties acting on behalf of those persons, can also be prosecuted where they have consented to the facilitation offence or the offence was committed as a result of their negligence or connivance.

Under the Ordinance, it is a defence to prove that 'prevention procedures' were adequately maintained and applied when the offence occurred, ie procedures designed to prevent the commission of the relevant offences.

The Ordinance also amends the Prevention of Crime (Bailiwick of Guernsey) Law, 1999 and the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 to create two new corporate offences of failing to prevent money laundering or terrorist financing.

The Ordinance is expected to come into force by regulations in late 2023.

### 5 OECD Crypto-Asset Reporting Framework – update

In August 2022, in light of the rapid growth of the crypto-asset market, the OECD approved the Crypto-Asset Reporting Framework (the **CARF**) ([here](#)). The CARF defines relevant crypto-assets in scope and the intermediaries and other service providers that will be subject to reporting and incorporates the Financial Action Task Force's anti-money laundering standards.

The CARF also provides for standardisation in the reporting of tax information on transactions in crypto-assets to facilitate the automatic exchange of such information under the OECD's Common Reporting Standard.

The States, alongside the other Crown Dependencies, has confirmed its commitment to adopt the CARF under the new international standard on automatic exchange of information between tax authorities developed by the OECD. The States, as a jurisdiction hosting active crypto markets, has also committed to incorporating the CARF into domestic law and activating exchange agreements in time for exchanges to commence in 2027 ([here](#)).

### 6 MONEYVAL inspection - update

MONEYVAL's on-site visit is scheduled for **15 to 26 April 2024**, with the peer review and plenary session in **December 2024** and the final report expected to be published in the **first quarter of 2025**.

Further details can be found [here](#).

## 7 AML/CFT Handbook - update

The Commission has updated the Handbook on Countering Financial Crime and Terrorist Financing (the **Handbook**) ([here](#)) to include specific guidance on when an independent audit function is required and undertaking business risk assessments.

In addition, the updates detail the information which:

- must accompany virtual asset transfers, and guidance for virtual asset service providers on meeting AML/CTF obligations; and
- trustees of relevant trusts and partners of relevant partnerships must hold about the identity of other regulated agents and service providers to meet FATF Recommendations to ensure that information regarding beneficial ownership of these entities is available to the competent authorities.

Appendix C of the Handbook has been amended removing Bulgaria from the list of equivalent jurisdictions and Appendix I amended, adding Chile, Curacao, Kazakhstan and Macau to the list of countries presenting a higher AML/CFT risk and removing Albania, Belize, Cayman Islands, Jordan, Kiribati, Kosovo, Morocco, and Rwanda from the list.

## 8 Guernsey Registry – new portal

The Registry is undergoing a digital transformation to improve the quality of the services it provides. The first phase saw the establishment of an online portal for the charities register in December 2022.

The new portal for company, limited partnership, limited liability partnership and foundation registers should be available from **4 December 2023**. Entities wishing to use the new portal to conduct a search on those entities, make submissions, including annual validations, or update information required by the Registry, etc, may register on the new portal [here](#).

Further details on the new portal can be found [here](#).

## 9 TISE - news

In October 2023, the International Stock Exchange (**TISE**) marked its 25<sup>th</sup> anniversary. The establishment of TISE in 1998 was a new innovation for the Channel Islands' financial services industry. Now, from its base in Guernsey, TISE has some 40 staff operating across five international finance centres and is a well-respected public market for listing equity and debt securities.

## Contacts

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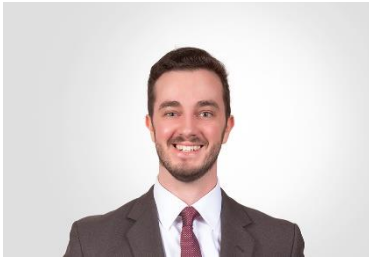
**Darren Bacon**  
Partner | Advocate  
Mourant Ozannes (Guernsey) LLP  
Guernsey  
+44 1481 731 503  
[darren.bacon@mourant.com](mailto:darren.bacon@mourant.com)



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



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



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



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



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



**Amy Williamson**  
Associate  
Mourant Ozannes (Guernsey) LLP  
+44 1481 739 313  
[amy.williamson@mourant.com](mailto:amy.williamson@mourant.com)



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

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