

Guernsey legal and regulatory update.

A brief overview of Guernsey legislative and regulatory developments
July 2018 to September 2018 inclusive

1 Revision of regulatory laws project

Following on from the consultations earlier this year 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 (both of which have now closed), the Guernsey Financial Services Commission (the **Commission**) has more recently issued a first draft of the Banking Supervision (Bailiwick of Guernsey) Law, 2018 for consultation by the financial services industry, again regarding any unintended consequences or fatal flaws (and not matters of policy which have already been agreed).

The engagement period ran from 12 July through to 27 August 2018 and therefore is now closed.

2 Substance requirements for Guernsey tax resident companies

A consultation on the introduction of legislation, which will require companies tax resident in Guernsey undertaking specific income generating activities to demonstrate that they have sufficient substance in Guernsey with effect from 1 January 2019, has now closed.

The proposals are a result of the commitment made by Guernsey and the other Crown Dependencies in November 2017 to address the European Commission Code of Conduct Group's (**EU Code Group**) concerns about the ability of the Crown Dependencies to demonstrate that companies tax resident in their jurisdictions operated with sufficient substance to justify access to the islands' corporate tax regimes. Guernsey and the other Crown Dependencies have worked closely together to develop the proposals which will require companies that are tax resident in Guernsey and engaged in any of the key activities identified by the EU Code Group to demonstrate that they meet the minimum substance requirements as part of their annual tax return. The substance requirements vary depending on the key activity, the relevant activities being collective investment schemes, fund management, banking, insurance, financing and leasing, shipping, intellectual property and holding companies that generate income from any of those activities.

The results of industry responses are expected during November. For further details on the impact on fund management, please refer to our legal update [Consultation on future Channel Island Fund Management Substance: the Codification of a Sustainable Model](#).

3 Prospectus and Registered Collective Investment Scheme Rules

The Prospectus Rules 2018 and the Registered Collective Investment Scheme Rules 2018 (the **New Rules**) have been issued and are effective from 6 October 2018. The New Rules replace the Prospectus Rules 2008 and the Registered Collective Investment Schemes Rules 2015 in their entirety. From that date, any **new** prospectus which falls within the scope of the Prospectus Rules will need to comply with the New Rules and, while any prospectus which is already in circulation will continue as if under the Prospectus Rules 2008, any changes to content must take effect in accordance with the New Rules. Any existing exclusions or derogations granted by the Commission, while they will continue to apply under the New Rules, should be reviewed to ensure that they are not affected by the changes introduced.

It is recommended that registered funds and issuers of prospectuses otherwise caught by the New Rules review their existing procedures so that, from 6 October, notifications can be made to investors and the Commission in the necessary timeframe and manner required under the New Rules. Administrators and service providers to registered funds and other issuers of prospectuses subject to the New Rules should review their own procedures to ensure compliance with the New Rules.

For the avoidance of doubt, authorised funds are governed by separate rules and are entirely unaffected by the changes.

A summary of the key changes made by the New Rules can be found in our legal update [GFSC: The Registered Collective Investment Scheme Rules 2018 and the Prospectus Rules 2018..](#)

4 Guernsey Green Fund

The Guernsey Green Fund (the **GGF**), a new investment product intended to cater for the development of informed green investments, was launched on 9 July having received significant support from respondents to the recent consultation. Feedback mostly concerned clarification on the role of service providers, in particular that of the designated administrator, in relation to both the ongoing monitoring of the GGF and certification. The Commission has clarified this in the published version of the Guernsey Green Fund Rules and has issued related guidance, both of which are available on the Commission's website via a new web page dedicated to the GGF, ([here](#)).

The GGF Rules have been structured to encourage all types of funds that fall within the green bracket to apply for a GGF designation, ie any type of fund can apply, whether new or existing, authorised or registered, open- or closed-ended, provided that it meets the criteria required by the GGF Rules. In addition to the usual application fees, there is an additional £500 administration fee in respect of the GGF application (effective 1 July next year).

5 Global Financial Innovation Network

The Commission is running a consultation on the role of the Global Financial Innovation Network (**GFIN**), a newly established group of 12 financial regulators from around the world, including the Commission. GFIN aims 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 experience and approaches.

The consultation paper is available [here](#).

6 Q2 statistics show increase

The June quarter investment statistics show a positive growth of 4.94 per cent, the net asset value of total funds under management and administration having increased by £13 billion.

A breakdown of Q2 results is available [here](#).

7 Corporate governance regime for AIM companies

The scope of the information which an AIM company must include on its website has been extended under the revised AIM Rules (effective 30 March 2018) to include details of how it complies against a recognised corporate governance code chosen by the board of directors (and if not, an explanation as to why not). In the absence of any definition or guidance, it is assumed that the revised version of the UK Corporate Governance Code and the QCA Corporate Governance Code are both recognised for the purposes of the AIM Rules (having both been cited as examples in the discussion paper dated 11 July 2017). In its AIM Notice 50 (8 March 2018) available [here](#), the LSE has reiterated that it does not intend to prescribe a list of recognised codes as it is preferable to have a range of options to suit each company's specific stage of development, sector and size. As regards a dual-listed company (which is trading on AIM), the LSE recognises that it may be more appropriate for such a company to report using an appropriate standard in its home jurisdiction. Any AIM company existing before 30 March 2018 had until Friday 28 September to comply.

8 Revisions to proceeds of crime framework

The States are considering proposed revisions to the anti-money laundering (AML) and combatting of terrorist financing (CFT) framework in the Bailiwick to meet the revised standards of the Financial Action Task Force and recommendations made by MoneyVal. The proposals, which have been subject to significant consultation, are expected to come into force on 31 December this year although the law will provide the States with regulation-making powers so as to be able to phase in compliance with different aspects of the requirements.

Important differences to the current framework include much more focus on risk, extending the requirements on enhanced client due diligence (ECDD), extending ECDD beyond foreign PEPs to include domestic PEPs and persons entrusted with a prominent function by an international organisation and a single Handbook for specified businesses, being financial services businesses and prescribed businesses.

To read the States' Policy Letter, click [here](#).

9 BREXIT

The States of Guernsey has sought Bailiwick businesses' views on Brexit, including on joining the World Trade Organisation, which will assist in preparation towards the future economic framework between the UK and the European Union and any opportunities that may arise for the Bailiwick.

The consultation has now closed.

10 EU Amendment of Legislation Law

Continuing the theme of Brexit, draft legislation is due to go before the States in October (the **Amendment of Legislation Law**) which will afford Guernsey the ability to amend preserved EU law, ie the directly applicable European legislation which had effect in the Bailiwick immediately before exit day and which has been preserved into domestic law by the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018 (the **Brexit Law**). The Brexit Law empowers Guernsey to amend and repeal EU preserved law however it may only do so where necessary as a result of the repeal of the European Communities Law, 1973 or otherwise in consequence of Brexit. The Amendment of Legislation Law on the other hand permits the amendment or repeal of preserved EU law for broader policy reasons, for example financial services, customs and trade, agriculture and fisheries. If approved by the States in October, the Amendment of Legislation Law will still require sanction of the Privy Council.

11 DTA between the UK and Guernsey

Guernsey has agreed a new double taxation agreement (DTA) with the UK replacing the one currently in force from 1951. The provisions of the DTA, which is broadly based on the OECD Model Tax Convention, are the same as those of the Isle of Man and Jersey and take into account the recent international standard designed to prevent base erosion and profit sharing (BEPS). The DTA with the UK is currently subject to ratification by both Guernsey and the UK.

Further information is available on the States Income Tax website [here](#).

12 OECD announces Guernsey as 'overall Compliant'

Guernsey is considered to be 'overall compliant' with the international standard of transparency and exchange of information for tax purposes. This is an improvement in Guernsey's previous rating which was 'largely compliant', denoting that Guernsey's legal framework is now generally in line with the international standard.

Read the OECD's press release [here](#).

13 Industry presentations - placeholder

The Commission's next industry presentations are taking place on Wednesday 3 April 2019.

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