Guernsey funds market update: ESG, discretionary exemptions and changes to the Licensees (Capital Adequacy) Rules, 2021

Service area / Investment Funds

Legal jurisdictions / Guernsey

Date / November 2022

ESG

The Guernsey Financial Services Commission ("**GFSC**") ran its Sustainable Finance Week in September and announced three initiatives that came into force from 20 September:

- The Natural Capital Fund Regime was launched and allows a regulatory designation for biodiversity and natural capital projects that positively contribute and/or reduce harm to the natural world. The regime has arguably more stringent criteria than those for the Guernsey Green Fund Regime.
- The green criteria in the Guernsey Green Fund Regime have been expanded to include the EU Taxonomy for Sustainable Activities' technical screening criteria for activities contributing to climate change mitigation and adaptation.
- Anti-greenwashing guidance for the investment sector. Any authorised or registered Guernsey fund must ensure that adequate disclosures are made to investors in respect of any environmental sustainability claims made in any of their information particulars or prospectuses. Any such disclosure complying with the EU's Sustainability-related Financial Disclosure Regulations (SFDR), will be deemed compliant with the anti-greenwashing guidance – see Sustainable finance: Guernsey's new anti-greenwashing guidance.

Also, a new report commissioned by Guernsey Finance, in association with Baringa Partners, was published in September, outlining the role to be played by the financial services industry, including in the funds space, in achieving a transition to a net zero future. The report sets out a potential roadmap for the next three decades, detailing how strategy can be translated into action, to accelerate the transition towards decarbonisation of the economy. The report concludes that the Guernsey funds sector has a crucial role to play, as Guernsey is a specialist centre for investing into alternative assets such as private equity, infrastructure and alternative debt, and its supportive regulatory regime is open to the development of new structures and products driven by client demand, with innovation such as its market leading Guernsey Green Funds, and the proposed Natural Capital Fund regime. The report includes a case study in relation to the Cibus Fund, the first to be accredited by the Guernsey Green Fund regime in 2018, in respect of which Carey Olsen advised. See here for further detail on the report.

Discretionary exemptions – expiry and renewal

Discretionary exemptions granted by the GFSC pursuant to The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 (the "**Fiduciary Law**") on or after 1 October 2019 expire after three years and must be renewed if still required. Accordingly, the first of those exemptions granted from 1 October 2019 onwards have recently become due for renewal. Discretionary exemptions may be granted under the Fiduciary Law to, among others, general partners acting for certain non-fund partnerships connected to a fund. To renew any exemptions due to expire, a written renewal request must be sent to the GFSC no later than one month prior to the three year expiry date. No fee is payable. Where an exemption no longer applies, the exempted person must notify the GFSC of this disapplication. If the activities or individuals involved in the structure have changed or there has been another material change with respect to the basis on which the discretionary exemption was initially granted, a new application must be submitted to the GFSC, together with the applicable fee. See here for further details.

Changes to the Licensees (Capital Adequacy) Rules, 2021 (the "**Rules**")

In September changes to the Rules concerning the requirements for professional indemnity insurance ("**PII**") were introduced. Transitional provisions will enable licensees to make any necessary changes to comply with the amended Rules at the point at which their insurance renewal falls due. The changes included a requirement that, when calculating whether a licensee had sufficient assets for capital adequacy purposes in accordance with the Rules, a deduction must be made of the amount of the excess on the licensee's PII policy, commencing from such time as the current PII cover is due to be renewed. However, following industry feedback, on 3 November the GFSC issued a notice revising the PII requirements for the vast majority of entities licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 2020 ("**POI Law**"). The change will be welcomed by Guernsey's significant private equity sector. As a result, no such deduction of the PII cover excess will need to be made in respect of a licensee with no physical presence in the Bailiwick, which is administered by another licensee in the Bailiwick and which is a general partner, manager or investment adviser of a collective investment scheme authorised or registered under the POI Law.

Subscribe for more

FIND US

Carey Olsen (Guernsey) LLP
PO Box 98
Carey House
Les Banques
St Peter Port
Guernsey GY1 4BZ
Channel Islands

T +44 (0)1481 727272
E guernsey@careyolsen.com

FOLLOW US

Subscribe for more

Visit our investment funds team at careyolsen.com

PLEASE NOTE