

Funds Update

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The latest news for the Guernsey funds sector

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> Industry feedback pays dividend with Company law reform

On 1 July 2008 The Companies (Guernsey) Law 2008 came into force consolidating existing Guernsey companies legislation into a single updated law. On 1 April this year, Guernsey's Commerce and Employment Department released a consultation document regarding changes to the legislation.

Many of the changes clarify existing provisions. The consultation generally appears to be a fine-tuning exercise intended to improve the provisions of a piece of legislation which is already regarded as having a modern approach to company law issues.

A number of the changes will be of particular interest to those in the funds sector and further details of these can be found [here](#).

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> Limited Partnerships: Unlimited Possibilities

Limited partnerships ("LPs") are a well established vehicle in Guernsey and are widely used to operate investment funds. They are advantageous in respect of tax planning, allow investor liability to be limited and new partners may be introduced as passive investors.

In keeping with Guernsey's reputation as innovative and progressive, our LP law is going one step further.

The proposed changes to the Law encompass a number of significant additions which are outlined [here](#).
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> Ashes to ashes, quorate to inquorate?

The recent and high-profile decision of the English Court of Appeal in *the Gaines-Cooper case* has again focussed attention on residency for tax purposes. Although *Gaines-Cooper* was concerned with individuals' residency issues, residency is also relevant to corporate entities such as funds.

In accordance with UK case-law offshore companies may be treated as resident in the UK for tax purposes if their central management and control is exercised in the UK. One reaction to this has been the incorporation into funds' constitutional documents of very specific requirements in relation to board constitution, directors' residency and the location of directors' meetings in an effort to mitigate against this risk.

This can have unexpected consequences however. Provisions which require a certain number of directors to be offshore residents or which state that board meetings cannot take place unless a certain number of directors are in specific locations can, if poorly drafted, act as traps. For example the resignation, illness or incapacity of a particular individual director or the closure of an airport due to bad weather (or even volcanic activity!) could result in some funds being unable to hold board meetings at a key time.

For these reasons we would suggest that at the time of launch, any restrictions applying to directors' residency or meetings are carefully considered and, if used, are drafted in such a way as to allow boards flexibility to cope with unforeseen circumstances.

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> Funds flock to Guernsey

Many international financial centres (IFCs) now have in place the necessary legal framework to allow the migration of companies, and therefore many funds, to and from other jurisdictions. Given Guernsey's position as a well regulated, tax efficient jurisdiction with substance in terms of the range of professional advisers and service providers, it is no surprise that we are now seeing an increase in funds being migrated to Guernsey from jurisdictions including the BVI and Cayman Islands.

Migrations have been possible in Guernsey for well over a decade but the process was streamlined in 2008 by the introduction of a new Companies law and the creation of an online Companies Registry. The procedure for migrating a fund into Guernsey is now reasonably straightforward, depending upon the laws of the jurisdiction it is migrating from, and can be achieved in a relatively tight time scale.

The key factors a fund wishing to migrate to Guernsey should consider include:

- Does its home jurisdiction allow it to migrate to Guernsey?
- Will any changes be needed to the constitutional documents or the offering documents?
- What consents are required from investors in the fund?
- Which type of fund will it become once registered in Guernsey?
- Do any service provider agreements need to be reviewed and updated (for example governing law and jurisdiction clauses)?

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