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FinReg Update

Guernsey

October to December 2022

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Quick Fire Updates

1. Lending credit and finance - update

Various provisions of the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the **LCF Law**) are now in force (effective **1 January 2023**), with full implementation from **1 July 2023**.

The Guernsey Financial Services Commission's (the **Commission**) announcement ([here](#)) indicates that the final rules and guidance to accompany the LCF Law, details of exemptions and supporting FAQs, are expected to be published by the end of January 2023, at which time the licence application window will open.

For an overview of the different aspects of the LCF Law and to keep up to date with its development, visit our dedicated Lending, Credit and Finance Hub [here](#).

2. Register of beneficial ownership - news

In a landmark decision the European Court of Justice (**ECJ**) has ruled that the provision of the EU's Fourth Anti-Money Laundering Directive (EU2015/849) as amended by the Fifth Directive (EU2018/843) (the **EU Directive**), which requires that information as to the beneficial ownership of legal entities is generally and publicly available, infringes fundamental rights to privacy and data protection under the EU Charter of Fundamental Rights (Articles 7 and 8), and is therefore invalid.

As a Crown Dependency, Guernsey made a commitment in 2019 to a beneficial ownership strategy leading to the implementation of a register of beneficial ownership on an essentially equivalent basis to the EU Directive via a three-step action plan.

The Crown Dependencies have issued a joint statement ([here](#)) indicating a short delay in implementing the 2019 commitment to consider the impact of the ECJ judgment and any associated developments in international best practice. We have also published commentary on what next for public registers of beneficial owners ([here](#)).

3. 'Six directorship' exemption - consultation

The States of Guernsey (the **States**) is consulting on proposed changes to the supervisory framework surrounding the 'six directorship' exemption under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 (the **Fiduciaries Law**). Currently individuals who hold six or less directorships (being directorships which are not subject to any other exemption under the Fiduciaries Law) are not required to hold a personal fiduciary licence. While those individuals are subject to anti-money laundering and counter-terrorism financing obligations, it is not possible currently for the Commission to monitor or verify compliance with their obligations (which was a point raised by MONEYVAL in 2015).

The proposal to implement a registration regime will impact only those individuals who currently rely on the 'six directorship' exemption, and so will not directly impact individuals who rely on other exemptions under the Fiduciaries Law, including employees/officers of licensed corporate service providers holding directorships in the course of their duties. It is also proposed that individual directors of companies administered by

a licensed corporate service provider (which also acts as the company's resident agent) and individual directors of charities and other non-profit organisations will be exempt from the registration requirement.

The consultation ([here](#)) is open until 16 January 2023.

4. Legislation administered by the Guernsey Registry - consultation

The States, in conjunction with the Guernsey Registry, is consulting on proposals to introduce a series of streamlining changes to legislation relating to companies, limited partnerships, limited liability partnerships and foundations. The proposed changes are intended to create more clarity and uniformity in the oversight of legal persons by the Guernsey Registry.

The consultation ([here](#)) is open until **23 January 2023**.

5. Secondary Pensions (Guernsey and Alderney) Law, 2022 – new law

The States has approved the Secondary Pensions (Guernsey and Alderney) Law, 2022, which provides for the 'Your Island Pension' (**YIP**), an employment-based pension for employees whose employers do not offer a workplace pension scheme. The secondary pensions obligations will come into force on 1 October 2023 and the YIP is likely to be launched ahead of this date so that employers who do not currently offer an appropriate workplace pension scheme can make necessary arrangements.

The policy letter is available [here](#).

6. Companies insolvency regime - update


The Companies (Guernsey) Law, 2008 (Insolvency) (Amendment) Ordinance, 2020 has finally come into force with effect from **1 January 2023**. The amendment ordinance introduces changes relevant to company liquidation and administration aimed at further improving and updating Guernsey's corporate insolvency regime and enhancing the powers of the liquidator and administrator.

Further details are available [here](#) and [here](#).

7. Russian sanctions – new prohibitions on the provision of trust services

On 16 December 2022, the UK Office of Financial Sanction Implementation amended the Russia (Sanctions) (EU Exit) (Amendment) Regulations 2022 (the **Russia Regulations**) to add new Regulation 18C targeting the provision of trust services. The Russia Regulations (including this amendment) automatically apply in Guernsey under the Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020.

New Regulation 18C prohibits the provision of trust services (which are widely defined to include trusts and similar arrangements) to any person connected with Russia and otherwise to any person who has been designated for the purpose.



The prohibition applies irrespective of when the arrangements were put in place, save that it allows for the provision of trust services to a person connected with Russia that are part of an 'ongoing arrangement' provided to or for the benefit of the person immediately before 16 December 2022.

Further details are available [here](#).

8. AML/CTF – thematic review of business risk assessments

The Commission has published its Thematic Review on Money Laundering and Terrorist Financing Business Risk Assessments (the **Review**) of over 100 licensed and registered firms across all sectors.

The results were largely positive, demonstrating that most met the Bailiwick's regulatory requirements. The Review identified 7 areas for improvement, and 2 areas in particular have been highlighted by the Commission, based on the prevalence of the issues identified throughout the sample:

1. Terrorist financing (TF) risk assessments less developed compared to money laundering (ML) risk assessment

Firms should use the National Risk Assessment to help them improve upon identifying the TF risks which are relevant to their business; and are encouraged to revisit where their TF vulnerabilities exist from their customers; jurisdictions; products; services; transactions and delivery channels.

2. Tailoring to specific ML and TF risk assessments

Firms should consider where they can enhance their ML and TF business risk assessments through increased use of management information about their customers, jurisdictions; products; services; transactions and delivery channels and the nature of the underlying predicate offences in suspicious activity reports.

A copy of the Review is available [here](#).

9. AML/CTF - updates

In November 2022, the States agreed to establish the Guernsey Integrated Money Laundering and Terrorist Financing Intelligence Task Force to be a public and private partnership modelled on the UK's Joint Money Laundering Intelligence Taskforce.

The policy letter is available [here](#). We have also published an update on the progress of this public-private partnership ([here](#)).

Both Appendix H (list of jurisdictions subject to a call for action) and Appendix I (list of jurisdictions under increased monitoring) of the Handbook on Countering Financial Crime and Terrorist Financing (the **Handbook**) have been amended ([here](#)) to list additional jurisdictions.

10. Regulatory fees 2023 - update

Following its consultation on proposals for an increase in regulatory fees and administrative penalties, the States has agreed to the Commission's proposal to increase licence fees paid by firms from 1 January 2023 by 8.0 per cent.

Further details are available [here](#).

11. Data Protection - news

The Office of the Data Protection Authority (**ODPA**) has issued a reminder to local organisations who rely on the European Commission's Standard Contractual Clauses to safely transfer people's data outside of the Bailiwick to ensure that they use the updated Standard Contractual Clauses, published in June 2021 ([here](#)), at the very latest by 27 December 2022.

In December 2022, the ODPA also issued guidance ([here](#)) for administrators and administered entities to assist them in determining whether they are required to register with the ODPA.

In other news, latest breach statistics reveal that 24 personal data breaches were reported during September and October 2022. In one example, a company discovered a personal data breach while carrying out a routine threat analysis of computer systems. Further details are available [here](#).

12. CIFO - news

The number of complaints received across the Channel Islands during the third quarter of 2022 (Q3) was 129, of which 75 were within the remit of the Channel Islands Financial Ombudsman (**CIFO**). Insurance (home emergency insurance), current accounts and money transfer were the products complained about, and in the main, complaints related to poor administration or delay, non-payment of claim or fees and charges.

Of the 56 complaints which were mediated or determined by CIFO in Q3, 41 per cent were found in favour of the complainant with the remaining complaints found in favour of the financial services provider.

The full report is available [here](#).

In September 2022, CIFO published a consultation on proposed case fees from 1 January 2023. Its feedback paper on this consultation was published in November 2022 and is available [here](#). In addition from 1 January 2023 the CIFO board decided to:

- i. adopt the power to waive case fees in exceptional cases; and
- ii. implement the previously approved exemption for Guernsey Community Savings LBG from CIFO case fees.

13. Charities and NPOs - update

On 12 December 2022, the Guernsey Registry launched an online portal for charities and NPOs to register and update their details, including submitting annual validations, changing their name and contact details, and removing themselves from the register. The portal can be accessed via the Registry's website [here](#).

14. MO FinReg Forum

If you would like to participate in our quarterly FinReg Forum, which provides updates on similar matters for each of Guernsey, Jersey (where the forum is hosted) and the Isle of Man (provided by Cains), please do get in touch.

Contacts



Alana Gillies Ridout
Partner | Advocate
Mourant Ozannes (Guernsey) LLP
+44 1481 731 513
alana.gilliesridout@mourant.com



Christopher Edwards
Partner | Advocate
Mourant Ozannes (Guernsey) LLP
+44 1481 739 320
christopher.edwards@mourant.com



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



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



Gilly Kennedy-Smith
Solicitor England & Wales (non-practising)
Mourant Ozannes (Guernsey) LLP
+44 1481 739 397
gilly.kennedy-smith@mourant.com



Gordon Dawes
Partner | Advocate
Mourant Ozannes (Guernsey) LLP
+44 1481 723 466
gordon.dawes@mourant.com



Helen Wyatt
Partner | Advocate
Mourant Ozannes (Guernsey) LLP
+44 1481 731 408
helen.wyatt@mourant.com



Jeremy Wessels
Partner | Advocate
Mourant Ozannes (Guernsey) LLP
+44 1481 739 303
jeremy.wessels@mourant.com



John Lewis
Managing Partner Guernsey | Advocate
Mourant Ozannes (Guernsey) LLP
+44 1481 731 505
john.lewis@mourant.com