

A low-angle, upward-looking photograph of several modern skyscrapers with glass facades against a clear blue sky. A red flag is visible on one of the buildings. The image is partially overlaid with a red geometric shape in the bottom left corner.

mourant

FinReg Update

Guernsey
April 2022 to June 2022

[mourant.com](https://www.mourant.com)

Quick Fire Updates

1. Bailiwick mind and management – update

The Licensees (Conduct of Business) Rules and Guidance, 2021 and the Fiduciary Rules and Guidance, 2021 (together the **Rules**) have been amended with effect from **10 June 2022** to include a new rule requiring the board of investment and fiduciary licensees to *'appoint such number of Bailiwick-based senior executives as is commensurate with the nature, size and complexity of the licensee's activities in the Bailiwick, and the prudent conduct of its business'*.

The original proposal was to include the new requirement in the form of 'guidance' to clarify that, in line with the Guernsey Financial Services Commission's (the **Commission**) current practice, *'maintenance of local mind and management'* is a relevant factor in the Commission's assessment of the prudent conduct of a licensee's business. However the addition of a new 'rule', together with a new definition of *'senior executives'*, is intended *'to provide a greater level of detail and increased certainty around the policy'*.

Highlights from the Commission's feedback to the consultation (issued in March this year) are that:

- the new definition of *'senior executives'* is intended to clarify that the new rule does not relate to the direction of the business but to the day-to-day management and prudent conduct of the business
- licensees should consider the new rule when reviewing management structures during the ordinary course of business
- compliance with the new rule serves a distinctly different and separate purpose to tax-based substance requirements
- investment licensees which are administered by another firm in the Bailiwick are excluded from the new rule.

The Commission's feedback to the consultation is available [here](#).

2. Professional indemnity insurance – update

The Commission is running a final eight-week consultation to identify any 'fatal flaws' in the proposed amendments to certain rules (listed below) which have been drafted following its review of industry responses to the consultations on professional indemnity insurance (**PII**) issued earlier this year in relation to the fiduciary, investment and insurance intermediary and insurance manager sectors. If implemented, the new rules will not apply to existing PII policies but will apply from the next renewal date.

By way of reminder, the earlier consultations made proposals for changes to the minimum PII regulatory requirements in order to ensure that those requirements remain fit for purpose and consistent with the minimum licensing criterion to conduct business in a prudent manner. In general, most of the respondents broadly supported the proposals set out in the consultations (with the proposals that respondents considered as *'particularly onerous'* in the current challenging PII market not being taking forward by the Commission at this time).

The rules subject to the proposed amendments are:

- the Fiduciary Rules and Guidance, 2021
- the Licensees (Capital Adequacy) Rules and Guidance, 2021
- the Insurance Intermediaries Rules and Guidance, 2021
- the Insurance Managers Rules and Guidance, 2021.

The Commission's Feedback Statements to each consultation, together with final drafts of the relevant rules, are available [here](#) (fiduciary and investment) and [here](#) (insurance intermediaries and insurance managers).

3. Thematic Review – pension transfers in the Bailiwick

The Commission has published the findings of its Thematic Review of the pension transfer landscape in the Bailiwick during 2021 and Q1 of 2022 ([here](#)). The objectives of the Thematic Review were to:

- understand the scale and frequency of pension transfers
- gain an understanding of licensees' conduct in relation to pension transfers, including the duration of transfers, approval and rejection regimes, the basis for calculating fees and to review any resulting complaints
- educate both licensees and pension members as to the Commission's expectations in these areas
- ascertain if any future amendments to the Pension Scheme and Gratuity Scheme Rules and Guidance, 2021 would be beneficial.

One of the Commission's observations is that there is a large variability in the length of time taken to reach a decision on a transfer request. The Commission expects transfer requests to be processed promptly and **within 60 days** from the date of receipt of requisite information/documentation with an explanation regarding the reasons for delay (if not within 60 days).

4. Thematic Review – financial sanctions compliance

The Commission has released a report on its Thematic Review undertaken in 2021 on licensees' effectiveness in monitoring and compliance with targeted financial sanctions. The results reflect the Bailiwick's commitment to preventing the abuse of its financial services sector and to meeting established international standards for preventing financial crime. The effectiveness testing was extensive, with those subject to the testing being responsible for over 260,000 business relationships, with the banks tested responsible for 99.8% of inward transactions and 99.6% of outward transactions in and out of the Bailiwick during 2021.

According to the report, the sanctions screening systems of those firms tested are effective, with only a small minority of firms made subject to risk mitigation programmes set by the Commission.

Full details of the report are available [here](#).

5. Commission's Annual Report for 2021

The Commission has published its annual report and financial statements for 2021 ([here](#)). Highlights include:

- **MONEYVAL** – over the next three years there will be an increase in the Commission's outreach to industry, a re-examination of the exemptions that are currently provided in legislation and a significant increase in the number of onsite visits in preparation for the next MONEYVAL visit in 2023/4
- **Credit and finance** – the launch of the first ever consumer credit legislation in the Bailiwick which will provide protection to Guernsey residents as well as a framework for regulating virtual asset service providers is imminent. The Commission intends to consult extensively with industry over the next three years about how to most effectively implement different aspects of the legislation, which needs to be embedded prior to the MONEYVAL inspection
- **Banking** – the Commission intends to issue a final consultative paper in 2022 that will implement the residual parts of the post-2008 Basel capital rules (dependent on the timing of implementation by the G7)
- **Insurance** – the Commission intends to issue a consultation paper in 2022 with a view to strengthening the regulatory regime for retail insurers, as well as covering residual action points arising from the 2019 International Association of Insurance Supervisors' review of the Commission's observance of international Insurance Core Principles.

6. Industry regulatory conference – save the date

The Commission's next industry presentation entitled 'Working together to combat financial crime' will be a half-day event taking place on **Tuesday 4 October** at 8:30am. Further details to follow.

7. Data protection - update

The Office of the Data Protection Authority (**ODPA**) has published three new updates to assist local organisations and businesses help protect individuals' data when it is transferred outside of the Bailiwick (to jurisdictions where there may be less protection). The updates are available [here](#).

In other news, latest breach statistics reveal that 26 personal data breaches were reported during March and April 2022, 11 of which occurred via email, an ongoing trend and which remains the most common type of breach reported (further details [here](#)).

The ODPA has also published its 2021 Annual Report ([here](#)).

8. CIFO - update

The number of complaints received across the Channel Islands during the first quarter of 2022 (**Q1**) was 134, 69 of which were within CIFO's remit. Current accounts, other insurance and health insurance were the top products complained about, and in the main, complaints related to poor administration/delay, fees and charges and refusal of service.

Of the 57 complaints which were mediated or determined by CIFO in Q1, under half (47 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](#).

CIFO has also released its annual report and accounts for 2021 ([here](#)).

9. 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

This update is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this update, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at mourant.com. © 2022 MOURANT OZANNES ALL RIGHTS RESERVED