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FinReg Update

Guernsey

July 2022 to September 2022

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Quick Fire Updates

1. Lending credit and finance – development

The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the **LCF Law**) has been approved by the States of Guernsey (the **States**) and is expected to come into force on **1 January 2023**, with full implementation scheduled to be 1 July 2023.

The LCF Law is primarily concerned with the protection of consumers in the Bailiwick who make use of consumer credit in all of its forms, but it also replaces the existing Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (the **NRFSB Law**) as well as introducing licensing for a wide range of activities related to virtual assets, fintech platforms operating crowdfunding and peer-to-peer platforms.

Prospective licensees who wish to continue existing activities or to carry on new business after the full implementation date will need to apply for a licence in time to ensure that the licence is in place by **1 July 2023**. This includes those firms which are currently registered as 'Non-Regulated Financial Services Businesses' under the NRFSB Law.

Notably licence applications made between 1 January 2023 and 28 February 2023 will receive a 50 per cent discount to the usual application fee.

The consultation on the draft rules which will underpin the LCF Law (the **Rules**) and which set out the proposed exclusions and exemptions has recently closed (available [here](#)).

We will be issuing a series of legal updates on the various parts of the LCF Law in the lead up to its commencement. However, if you have any questions in the meantime, please do get in touch with one of our contacts listed at the end of this Update.

2. Specific discretionary exemptions – due to expire

Specific discretionary exemptions granted **after 1 October 2019** are subject to a three-year expiry date (which will be stated in the discretionary exemption letter). Renewal (if still required) must be made by written application to the Commission at least one month prior to expiry. Exemptions that are not renewed will automatically expire and continuing to act thereafter may result in a breach of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020 (the **Fiduciaries Law**).

Further details, including how to apply, are available [here](#).

3. Professional indemnity insurance - amendments

Amendments have been implemented to the regulatory rules affecting the investment, fiduciary and insurance sectors, namely:

- The Fiduciary Rules and Guidance, 2021 ([here](#))
- The Licensees (Capital Adequacy) Rules and Guidance, 2021 ([here](#))
- The Insurance Intermediaries Rules and Guidance, 2021 ([here](#)) and
- The Insurance Managers Rules and Guidance, 2021 ([here](#)).

The amendments were drafted following the Commission's review of industry responses to its consultations on professional indemnity insurance (**PII**) issued earlier this year and more recently its 'fatal flaws' consultation.

The amendments include transitional provisions enabling licensees to make any necessary changes to comply with the new rules at the point at which their insurance renewals fall due. Licensees are recommended to carefully consider how the amended rules will apply to them.

4. AML/CFT Handbook - amendment

Gibraltar has been removed from Appendix C of the Handbook on Countering Financial Crime and Terrorist Financing (list of equivalent jurisdictions) and added to Appendix I (list of countries and territories which may present a higher risk of money laundering and terrorist financing).

An instruction has also been issued ([here](#)) to all specified businesses setting out the steps to be taken before the end of **December 2022** in respect of business relationships they have which are connected to Gibraltar.

Malta, which befell the same fate in 2021, has now been removed from Appendix I.

5. Regulatory fees 2023 - consultation

The Commission has consulted on proposals for an increase in regulatory fees and administrative penalties which are to apply from **1 January 2023**. The proposals would directly affect all existing licensees, registered entities, and authorised entities, as well as any applicants for licensing or registration.

The consultation is open until **14 September 2022** ([here](#)).

6. Regulatory enforcement

The Commission has imposed a discretionary financial penalty on a primary fiduciary licensee for failing to meet the minimum criteria for licensing under the Fiduciaries Law ([here](#)).

More recently the Commission has imposed discretionary financial penalties on two individuals, each for failing to meet the minimum criteria for licensing under the Fiduciaries Law and the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002. One of those individuals is also prohibited from holding certain functions, including director and controller, in relation to a licensee, and has had the 'not more than six' directorship exemption under the Fiduciaries Law disapplied, for a period of two years and ten months.

7. Beneficial ownership - amendments

Amendments have been made to the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 as of 14 July 2022.

Notably:

- the functions of the Registrar of Beneficial Ownership have been broadened to include ensuring the accuracy of information relating to nominee relationships

- a requirement has been included that the resident agent must keep a record of the '*required particulars*' of non-individual beneficial owners, which includes its name, date of incorporation and place of incorporation
- the removal of the requirement that the resident agent record the fact that it has ascertained that there are no beneficial owners – this being not permitted
- to include the factors which the Registrar must consider when deciding whether to make a resident agent disqualification order
- to update the definition of '*regulated relevant legal person*' to include a relevant legal person that has a resident agent which is itself a regulated person; and to clarify that a '*non-regulated relevant legal person*' includes a relevant legal person which was, but is no longer, a regulated relevant legal person
- to prohibit applications to register or incorporate a Guernsey company, foundation, limited liability partnership or other legal person if its constitutive documents allow it to issue bearer securities and
- to permit the Revenue Service to inspect the register of beneficial ownership.

8. Economic crime bureau - establishment

Launched informally in June 2021, the Economic and Financial Crime Bureau (**EFCB**) has been legislated for by the Committee for Home Affairs under the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022 (the **EFCB Law**). The EFCB has responsibility for the investigation of serious and complex economic crime, money laundering and the recovery of the proceeds of crime. The Financial Intelligence Unit sits under the umbrella of the EFCB, together with criminal investigation teams, a civil recovery team, a specialist investigatory advisory team and an intelligence development unit.

The EFCB Law was registered at the Royal Court on 25 July 2022 and will come into force on a future date appointed by Ordinance.

9. Data protection - update

The Office of the Data Protection Authority (**ODPA**) has given an overview of the way in which Guernsey's new discrimination law, namely the Prevention of Discrimination (Guernsey) Ordinance, 2022 (the **Discrimination Law**) may affect an employer or employee once enacted. The Discrimination Law is not yet in final form having been debated by the States at its meeting on 28 September 2022.

In other news, latest breach statistics reveal that 18 personal data breaches were reported during July and August 2022. While a low number of breaches, the number of people affected was high because of a single reported incident that led to the accidental destruction of a large number of records containing people's names, dates of birth and medical information. Further details are available [here](#)

The ODPA has given three reprimands during July and August, one concerning a failure to respond appropriately to a request for data; another in relation to the disclosure of personal data (of which the data subject was unaware) and another regarding inappropriate reliance on consent in an employment context.

10. CIFO - update

The number of complaints received across the Channel Islands during the second quarter of 2022 (Q2) was 110, 65 of which 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 70 complaints which were mediated or determined by CIFO in Q2, over half (62 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 published a consultation on its proposed case fees for 1 January 2023 and is seeking feedback from financial services providers, industry associations and any other interested parties. The consultation ([here](#)) closes on 20 October 2022.

11. 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

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