

Guernsey legal and regulatory update

An overview of Guernsey legislative and regulatory developments
1 June to 31 August 2022

1 Bailiwick mind and management - update

The Licensees (Conduct of Business) Rules and Guidance, 2021 and the Fiduciary Rules and Guidance, 2021 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; and
- investment licensees which are administered by another firm in the Bailiwick are excluded from the new rule. We would expect the overwhelming number of general partners to fall into this exclusion.

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

2 Professional indemnity insurance - update

Amendments have been implemented to the Licensees (Capital Adequacy) Rules and Guidance, 2021 ([here](#)) following the Commission's final consultation on any 'fatal flaws' to the proposed amendments. The amendments, which 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, were drafted following the Commission's review of industry responses to its consultations on professional indemnity insurance (**PII**) issued earlier this year in relation to the fiduciary, investment and insurance intermediary and insurance manager sectors.

By way of recap, the 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 taken forward by the Commission at this time).

The Commission's Feedback Statements to the consultations are available [here](#).

3 Lending credit and finance - development

The Commission has published a Consultation Paper setting out draft rules and its proposed approach to regulating the various sectors covered by the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the **LCF Law**), which was approved by the States in July this year and expected to be effective **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. It also introduces licensing for a wide range of activities related to crypto currencies and other virtual assets; it covers Fintech platforms operating crowdfunding and peer-to-peer platforms as well as virtual asset service providers; and it replaces the existing Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 (the **NRFSB Law**) with the licensing and regulation of 'financial firm businesses'.

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

The Commission has indicated that it will open the window for licence applications from **1 January 2023** and it will apply a **50 per cent** discount to applications received by **28 February 2023**. Applications after that date will be charged the full application fee and applications received after **31 March 2023** are not guaranteed to have their licence granted in time, ie by 1 July 2023.

The consultation closes on 15 September 2022 and is available [here](#).

We will be issuing a series of legal updates on the various parts of the LCF Law over the coming months.

4 Specific discretionary exemptions - expiry

Any specific discretionary exemption granted after **1 October 2019** is subject to a three year expiry date (which will be detailed on the discretionary exemption letter). If the discretionary exemption is still required, then it is necessary to make a written application to the Commission to renew it **at least one month before** its expiry date. Failure to renew will result in an automatic expiry on the expiry date and may result in a breach of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2020, if the entity continues to act.

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

5 Regulatory fees 2023 - consultation

The Commission is consulting 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 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 has been removed from Appendix I.

7 Commission's Annual Report 2021 – key take-aways

The Commission has published its annual report and financial statements for 2021 ([here](#)) (**Report**).

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.
- **Crypto and cannabis funds** – the Commission has seen increased interest in the use of alternative asset classes such as cannabis and crypto assets, some of which it has approved during 2021. The Commission considers each application (and generally excludes fast-track) on its own merits. It expects the promoter or sponsor to have a demonstrable and proven track record in the relevant asset class and looks to ensure that key controls around custody, liquidity, valuation of assets and investor information are appropriate. With regards to licensees, they are expected to have the requisite knowledge and expertise to evaluate the risks around such business and prudently carry out their regulatory responsibilities.
- **Green funds** – the Commission's external thematic review of Guernsey Green Funds concluded that the funds themselves appeared to be being invested properly in appropriate assets providing mitigation against the risk of 'greenwashing'.
- **Fund directors (non-listed)** – the Commission has reminded fund directors of the importance of ensuring that the role of each service provider to a fund is clearly and properly documented and that directors' oversight of such service providers should include receiving evidence.
- **Outsourcing** – licensees must ensure that adequate governance and management control is maintained in relation to the use of outsourcing and remote working. Particular regard must be given to due diligence conducted on prospective providers, ongoing oversight and adequate contingency planning for the cessation of an arrangement. Both the Commission and international standards requires substantial mind and management to remain in the Bailiwick - outsourcing and remote working must not lead to a situation where a licensee becomes an empty shell that lacks substance.
- **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* and peer to peer platforms, is imminent (see para. 3 above). According to its Report, 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.

8 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.

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10 TISE – news

The International Stock Exchange has issued an unaudited update on its recent trading ([here](#)), ahead of the release of the 2022 Interim Financial Report during Q3 of 2022.

11 Data protection – news

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 28 personal data breaches were reported during May and June 2022, 13 of which occurred via email, which remains the most common cause for the breaches reported (further details [here](#)).

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

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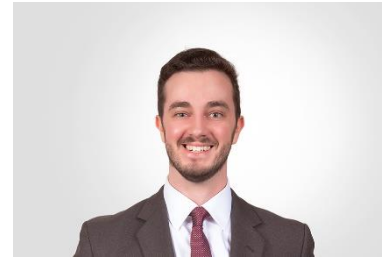
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