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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 bottom portion of the image is overlaid with a dark red semi-transparent rectangle containing white text.

FinReg Update

Guernsey

April to June 2023

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Quick Fire Updates

1. Lending credit and finance - update

The Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 (the **LCF Law**) is now fully in force, effective **1 July 2023** and has repealed the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008.

Anyone conducting activities that are regulated by the LCF Law must be licensed to do so or rely on an appropriate exemption, in the absence of which such regulated activity must cease. Anyone who is party to historic arrangements that may be in scope should consider the application of the LCF Law without delay and record their findings and approach.

We have various information available on our dedicated 'Lending, Credit and Finance Hub' ([here](#)), including an overview of the licensing of virtual asset service providers (**VASPs**) and most recently the Guernsey Financial Services Commission's (the **Commission**) enforcement powers under the LCF Law.

2. Insurance - preferred debts

Amendments have been made to the Preferred Debts (Guernsey) Law, 1983, the Insurance Business (Bailiwick of Guernsey) Law, 2002 (the **IBL**) and the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 to include preferred insurance debts as a new category of preferred debts.

A 'preferred insurance debt' is a debt to which a licensed insurer is, or may become, liable under a contract of insurance to a policyholder (or any person who has a direct right of action against that insurer) and includes any premium paid in connection with a contract of insurance which the insurer is liable to refund.

3. International tax (Pillar 2 Global Tax Framework) - update

In May 2023, Guernsey, Jersey and the Isle of Man announced their joint approach to implementation of the Organisation for Economic Co-operation and Development (**OECD**)'s Pillar 2 Global Tax Framework. Pillar 2 is part of the two-pillar solution agreed in the OECD/G20 Inclusive Framework on Base Erosion and Profit Sharing (BEPS) in 2021 to address the taxation challenges of the digitalised global economy.

Pillar Two applies to large multi-national enterprises (**MNEs**) that meet an annual consolidated revenue of EUR 750 million. The Islands intend to implement an 'Income Inclusion Rule' and a domestic minimum tax to provide for a 15 per cent effective tax rate for MNEs from **2025**.

The announcement ([here](#)) confirms the three Islands' commitment to work together to continue to offer attractive and globally competitive investment environments.

Further details are available [here](#).

4. Financial Crime Return Rules - update

Following its consultation earlier this year, the Commission has made the Financial Crime Return Rules, 2023 (the **Rules**) ([here](#)) which apply to all licensees other than holders of personal fiduciary licences, general business licensees under the IBL, insurance intermediary licensees under the Insurance Managers and Intermediaries (Bailiwick of Guernsey) Law, 2002 and persons licensed to provide ancillary services under Part II of the LCF Law.

The Rules make the filing of the following returns mandatory with effect from **31 May 2023**:

- financial crime risk returns from all licensed firms by **31 October 2024**, ie following the end of the reporting period 1 July 2023 to 30 June 2024, and annually, and
- financial flows returns completed by banks within two months of quarter end, with first quarter data due by **31 May 2023**, ie following the end of the first reporting period 1 January 2023 to 31 March 2023.

These returns have been in place for some time and until now the Commission has fed back to licensees that have made errors, omissions or delayed submissions. From 2024 onwards, administrative penalties for the late or inaccurate submission of returns will apply.

5. Commission's 2022 Annual Report

The Commission has published its 2022 Annual Report ([here](#)) revealing the challenges it faced in 2022 and how global events have increased the risks faced by the financial services sector.

The report reviews the Commission's continued development of digital technology to enhance performance, its work with Guernsey Finance and others to develop the Bailiwick's position globally in the sustainable finance sector, and its support for the Bailiwick's preparations for the MONEYVAL inspection scheduled for 2024.

6. Guernsey Registry - update

The States of Guernsey (the **States**) has published a policy letter setting out proposed amendments to 'legislation administered by the Guernsey Registry (the **Registry**)', that is the legislation applicable to Guernsey companies, limited partnerships, limited liability partnerships and foundations.

The proposed amendments include changes to record keeping requirements, information gathering and sharing powers, the Registrar's functions and enforcement measures.

The proposals form part of the Bailiwick's preparations for the forthcoming MONEYVAL inspection and are intended to meet Financial Action Task Force (FATF)'s Recommendations on transparency and beneficial ownership of legal persons, and international co-operation.

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

7. 'Up to six-director' exemption - update

The States has published a policy letter proposing that individual directors who rely on the 'up to six-director' exemption under the Regulation of Fiduciaries, Administration Businesses, Directors etc. (Bailiwick of Guernsey) Law, 2020 (the **Fiduciaries Law**) are required to register with the Commission, with the aim of bringing them within the ambit of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the **POC Law**). Full details are set out in the policy letter [here](#).

If approved, directors will have until **1 October 2023** to complete the new registration requirements. Certain categories of director are expected to be exempt from the new registration requirement, for example any director who holds a personal fiduciary licence under the Fiduciaries Law, directors of any company which is administered by a corporate service provider that holds a fiduciary licence and acts as the resident agent of the company and any director who is registered on the Registry's Register of Charities and other Non-Profit Organisations.

8. AML/CFT - updates

The Commission published a consultation on AML/CFT obligations regarding:

- **VASPs** - proposed additional rules for and guidance on satisfying the requirements of Schedule 3 to the POC Law and the Handbook on Countering Financial Crime and Terrorist Financing (the **Handbook**); and
- **trustees and partners (excluding limited partners)** - a new section to chapter 7 of the Handbook on the due diligence measures for legal persons and arrangements that will apply to licensed trustees of trusts, as well as to licensed partners of partnerships and limited partnerships without legal personality.

The consultation ([here](#)) closed on **3 July 2023** and it is envisaged that the updated Handbook will be issued in early July. There will **not** be any transitional provisions.

The States has published several other amendments to the AML/CTF provisions in the supervisory laws, including:

- introducing a new corporate offence of failing to prevent money laundering, terrorist financing and tax evasion by employees and other persons acting on behalf of a relevant organisation ([here](#)), and
- adding a new definition of '**unregulated officer**', ie a trustee or partner of a relevant partnership (other than a limited partner in the case of a limited partnership) not required to hold a licence under any of the supervisory laws, together with obligations which an unregulated officer must fulfil ([here](#)).

9. Regulatory enforcement

Sanctions and financial penalties have been imposed on two individuals for failing to meet the minimum criteria for licensing under the Fiduciaries Law ([here](#)).

This matter is linked to a public statement and prohibition order made by the Commission in April 2021, details of which can be found [here](#). The delay between the two public statements was because one of the individuals appealed the decision of the Senior Decision Maker. The appeal was dismissed.

10. Data Protection - news

Breach statistics for quarter 1 of 2023 reveal that 38 personal data breaches were reported to the Office of the Data Protection Authority (the **ODPA**). One of the breaches involved a UK-based company that was subject to a large cyber-attack. Although not based in Guernsey, it reported the breach to the ODPA as Guernsey was one of several jurisdictions where it had affected customers. Further details are available [here](#).

In other news, the ODPA announced ([here](#)) that Brent Homan will take over from Emma Martins as Data Protection Commission from **January 2024**. Mr Homan is currently Deputy Data Commissioner at the Office of the Privacy Commission of Canada.

The ODPA published its 2022 Annual Report in which it reviews progress on the delivery of its Strategic Plan. The Annual Report also reviews complaints which the ODPA investigated during 2022 and outlines its findings and learning points for organisations and businesses. The full report is available [here](#).

The ODPA has issued several new guidance documents including guidance on direct marketing in business ([here](#)), the use of artificial intelligence systems ([here](#)), making and responding to data subject access requests ([here](#)) and the operation of closed-circuit television ([here](#)).

11. CIFO - news

The Channel Islands Financial Ombudsman (the **CIFO**) received 151 complaints in the first quarter of 2023 (**Q1**), of which 97 were within its remit. Insurance (home emergency insurance), current accounts and money transfers were the products most complained about, and in the main, complaints related to delay, non-payment of claim and refusal of service.

Of the 50 complaints which were mediated or determined by the CIFO in Q1, 38 per cent were found in favour of the complainant and 22 per cent were upheld in part, with the remaining complaints found in favour of the financial services provider.

In its 2022 Annual Report ([here](#)), the CIFO reported a 20 per cent increase in the number of complaints received in 2022 (500 compared to 415 in 2021). The increase appears to be driven in part by rising inflation and interest rates, as well as complaints linked to banks' responses to customers who have been victims of fraudulent scams. The full report is available [here](#).

12. 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 from time to time the Isle of Man (provided by Cains), please do get in touch.

Contacts



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



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



Sally Rochester
Director
Mourant Consulting, Guernsey
+44 1481 731 508
sally.rochester@mourant.com



Manus Carvill
Associate Director
Mourant Consulting, Guernsey
+44 1481 739 348
manus.carvill@mourant.com