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# FinReg Update

Guernsey

July to 2 October 2023 (Publication date 5 October 2023)

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# Quick Fire Updates

## 1. 'Up-to-six directorships' exemption - update

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By way of reminder, individuals relying on the 'up-to-six directorships' exemption under the Regulation of Fiduciaries, Administration Businesses, Directors etc. (Bailiwick of Guernsey) Law, 2020 are now required to register with the Guernsey Financial Services Commission (the **Commission**) (unless otherwise exempt), bringing them within the ambit of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the **POC Law**). The deadline for registration expired on **1 October 2023**.

Simultaneously, a new and simplified framework tailored for individuals relying on the up-to-six directorships exemption has been introduced which clarifies the scope of their AML/CFT obligations ([here](#)) and disapplies certain common AML/CFT obligations, for example the requirement to undertake risk assessments, maintain policies and procedures and appoint a money laundering reporting officer and money laundering compliance officer.

Further details can be found in our Update ([here](#)).

## 2. Politically Exposed Persons (PEPs) – thematic review on managing risk

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The Commission has published its report on the thematic review of managing the risk posed by Politically Exposed Persons (the **PEP Thematic**) ([here](#)).

The PEP Thematic focuses on the effectiveness of banks, fiduciaries, insurers, fund administrators and lawyers in managing the risk posed by PEPs in accordance with the requirements set out in the Handbook on Countering Financial Crime and Terrorist Financing (the **Handbook**).

In 2022, the total number of PEP relationships equated to just 1.4 per cent of total business relationships within the Bailiwick. The PEP Thematic concluded that controls employed by firms to mitigate risk were effective, but provided a summary of areas for improvement, which includes the following:

- policies and procedures should:
  - identify and document prominent public positions which may give rise to risk
  - identify close associates of PEPs and consideration of the risks they may pose, and
  - be tailored to reflect a firm's specific PEP controls to mitigate its particular PEP risks
- where a PEP relationship is identified:
  - the risk assessment should document the risks of the PEP's position to ensure sufficient mitigation is applied appropriate to the nature of the PEP relationship
  - the source of wealth and source of funds assessment should include consideration of the risk posed by the PEP (eg the geographical sphere of the activities and the industry in which funds have been generated and if the sources are plausible), and

- firms should ensure that information provided to senior management provides a full picture of the firm's PEP exposure.

The Commission will consider how firms have incorporated the findings from the PEP Thematic into their systems and controls as part of its ongoing supervision.

## 3. Guernsey Registry – update

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The States of Guernsey (the **States**) has approved amendments to several pieces of legislation governing entities that are administered by the Guernsey Registry (the **Registry**), including the Companies (Guernsey) Law, 2008 (the **Companies Law**), the Limited Partnerships (Guernsey) Law, 1995 and the Limited Liability Partnerships (Guernsey) Law, 2013.

The amendments, driven partly by the forthcoming MONEYVAL inspection, are intended to provide greater consistency of information available to the Registry and improve clarity and uniformity in the Registry's oversight of legal entities, and harmonise enforcement measures and information gathering and sharing powers across the Bailiwick's authorities.

The amendments include changes to entity record-keeping obligations, Registrar functions to obtain and disclose information, and additional disclosure of information by resident agents to specified authorities. New offences have been created, including failing to comply with registration and notification requirements and information requests from the Registrar, and civil penalties have been introduced for all offences.

Some of the amendments, including those to the Companies Law, came into force in **July 2023**. The remaining amendments (some of which require Privy Council approval) are expected to be effective later this year and include the new requirement that limited partnerships and foundations must have a resident agent.

The civil penalty provisions will commence on **15 December 2023**, with the level of the penalties ranging from £90 to £2,500 depending on the nature of the breach and the category and banding of the failure and entity respectively. Further details can be found in our Update ([here](#)).

## 4. MONEYVAL inspection - update

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The Commission has confirmed that around 60 firms have been selected for the forthcoming MONEYVAL inspection and have been notified accordingly. Those firms selected are predominantly in the banking and fiduciary sectors, being the higher risk sectors. It is possible that MONEYVAL will decide to identify some firms of its own motion, who will be notified in advance of MONEYVAL's inspection. Training will be provided to those selected in the first quarter of 2024 in the form of mock interviews, guidance etc.

MONEYVAL's on-site visit is scheduled for **15 to 26 April 2024**, with the peer review and plenary session in **December 2024** and the final report expected to be published in the **first quarter of 2025**.

## 5. Trading Standards - update

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The Trading Standards (Fair Trading) Ordinance, 2023 (the **TS Ordinance**) came into force on **2 October 2023** and, in advance of its commencement, the Trading Standards Service has published advice and guidance for businesses covering all aspects of the TS Ordinance ([here](#)).

The TS Ordinance will introduce wide ranging provisions in respect of consumer protection and fair trading, including introducing statutory rights and remedies in respect of consumer contracts for the supply of goods, digital content and services, as well as unfair consumer contract terms, unfair commercial practices, consumer information requirements and cancellation rights and product safety.

## 6. Discrimination - update

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The Prevention of Discrimination (Guernsey) Ordinance, 2022 (the **Discrimination Ordinance**) came into force on **1 October** providing protection against discrimination on the grounds of disability, race, carer status, sexual orientation and religion or belief. The Employment and Equal Opportunities Service ([here](#)) has also been established to provide information and support for employers, employees and service providers on Guernsey's employment and discrimination legislation.

For further information please see our Update [here](#).

## 78. AML/CFT Handbook - update

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The Commission has updated the Handbook ([here](#)) to include specific guidance on when an independent audit function is required and undertaking business risk assessments.

In addition, the updates detail the information which:

- must accompany virtual asset transfers, and guidance for virtual asset service providers on meeting AML/CTF obligations, and
- trustees of relevant trusts and partners of relevant partnerships must hold about the identity of other regulated agents and service providers to meet FATF Recommendations to ensure that information regarding beneficial ownership of these entities is available to the competent authorities.

Appendix I of the Handbook has been amended, adding Chile, Curacao, and Macau to the list of countries presenting a higher AML/CFT risk and removing Belize, Kiribati, Morocco, and Rwanda from the list.

## 8. Sanctions - update

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The States has approved amendments to the Bailiwick's legal AML/CFT framework and the implementation of international sanctions ([here](#)), as part of the preparations for the 2024 MONEYVAL inspection and to ensure compliance with FATF Recommendations on the requirement for jurisdictions to have the powers to apply appropriate countermeasures.

The amendments, which parallel the provisions under the equivalent legislation in the UK and Jersey, amend the following legislation:

- the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (the **T&C Law**) - to enable the States to apply countermeasures to countries carrying out money laundering, terrorist financing or weapons development activity
- the Sanctions (Bailiwick of Guernsey) Law, 2018 and the Terrorist Asset Freezing (Bailiwick of Guernsey) Law, 2011 - to introduce requirements in relation to the functions of the States concerning financial sanctions, and
- the POC Law - to specify that preventive measures apply to terrorist financing and sanctions breaches.

## 9. Regulatory enforcement

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The Commission made several public statements between **July 2023** and **September 2023** in respect of certain licensees and associated individuals, including that it had imposed financial penalties and prohibition orders for failing to fulfil the minimum criteria for licensing. Further details are available [here](#) and [here](#).

In addition, a number of Royal Court judgments have been handed down in appeals against decisions of the Commission, some of which are themselves now subject to appeal. See our separate Update ([here](#)) on the appeal in *X, Y and Z v the Chairman of the Commission*.

## 10. New corporate offence - tax

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The States has approved the Criminal Justice (Miscellaneous Amendments – Preventative Offences) (Bailiwick of Guernsey) Ordinance, 2023 (the **Ordinance**) ([here](#)), which creates new offences of failing to prevent the facilitation of tax evasion by employees and other persons acting on behalf of the relevant organisation.

As well as the corporate offence, individuals acting in certain roles for the relevant body (such as directors, managers, senior officers, partners, and foundation officials) and third parties acting on behalf of a person, can also be prosecuted where they have consented to the facilitation offence or the offence was committed as a result of their negligence or connivance.

Under the Ordinance, it is a defence to prove that 'prevention procedures' were adequately maintained and applied when the offence occurred, ie procedures designed to prevent the commission of the relevant offences.

The Ordinance also amends the POC Law and the T&C Law, to create two new corporate offences of failing to prevent money laundering or terrorist financing.

The Ordinance is expected to come into force by regulations in late 2023.



## 11. Data Protection - news

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Breach statistics for the second quarter of 2023 reveal that 32 personal data breaches were reported to the Office of the Data Protection Authority, one of which involved an employee who had used a personal device to record a customer's personal data because an IT failure meant that they had no access to their work device. Further details are available [here](#).

## 12. CIFO - news

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The Channel Islands Financial Ombudsman (the **CIFO**) received 151 complaints in the second quarter of 2023 (**Q2**) ([here](#)), of which 122 were within its remit. Home insurance, current accounts and money transfers were the products most complained about, and, in the main, complaints related to poor administration, delay, non-payment of claim and refusal of service.

Of the 66 complaints which were mediated or determined by the CIFO in Q2, 42 per cent were found in favour of the complainant and 24 per cent were upheld in part, and 33 per cent were found in favour of the financial services provider.

## 13. MO FinReg Forum

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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.



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