

# GIN Members' Newsletter

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An update on key issues for in-house Counsel in Guernsey as at 12 May 2020

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## 1 COVID-19 Legislation

As the Channel Islands have spent the weekend celebrating the 75<sup>th</sup> anniversary of Liberation Day, the current COVID-19 lockdown measures have seen islanders experience the most far-reaching restrictions of personal liberties since the Second World War. As lawyers, it's important to understand the legislative underpinning of the current situation. In Guernsey, the Civil Contingencies (Bailiwick of Guernsey) Law 2012 created the Civil Contingencies Authority with the Chief Minister at its head and comprising the key States committee presidents. HM Procureur must attend all meetings. The Bailiff has a right to attend and advise, which is a curious throwback to another age.

Under the 2012 Law, if an emergency has occurred, the Authority may make emergency regulations. Emergency is broadly defined and the present circumstances comfortably fall within the definition. There is enormous scope given to the Authority to make "...provision of any kind that could be made by Projet de Loi..." for protecting human life, health or safety, protecting food, water and fuel supplies, systems of communication, transport, health services and maintaining public order. There is power to make criminal offences punishable by up to three months imprisonment or a £10,000 fine.

The regulations must be put before the States to be approved or else lapse after seven days. If adopted by the States, they can last up to 30 days. All the regulations that have been made are consolidated into the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (Regulations) 2020.

Jersey has done very similar things but did not have an equivalent of Guernsey's 2012 Law in the first place. Accordingly, it had to move quickly to pass (and get Royal Assent for) the COVID-19 (Enabling Provisions) (Jersey) Law 2020, which came into force on 8 April.

The Jersey Law is of narrow scope, addressed only to the present emergency, but gives the States of Jersey enormous powers to make regulations containing such provision as "appears to them to be necessary or expedient as a direct or indirect result of the outbreak of COVID-19...or the aftermath of that outbreak...". Curiously, no regulations are to be made after 1 January 2021 – but nothing is said to limit the duration of regulations made prior to that date. In practice the Jersey regulations have been expressed to end on 30 September 2020.

Both islands presently have enormous and unprecedented law making powers – exercisable without reference to London and without the need for Royal Assent. In the handling of the most serious emergency to affect the Islands since WWII the islands have, in effect, operated independently from London, perhaps marking an important chapter in the evolution of Channel Island autonomy.

## 2 Trusts update

Unfortunately, even in lockdown, the world of private client and trusts continues to throw up all sorts of extraordinary fact patterns which trustees need to negotiate. We highlight two issues worth bearing in mind for trust companies and trustees.

1. No-one knows who is going to get COVID-19 and be prevented from doing their job for weeks at a time. It happened to Boris Johnson, so it can also happen to individual trustees and directors of corporate trustees and PTCs. Trustees and in-house counsel should consider whether they can execute

powers of attorney in favour of other senior directors, or, in the case of PTCs or subsidiary companies, appoint alternate directors. You will need to look at the trust deed as to whether trustee decisions need to be unanimous and/or whether there are restrictions on delegation by the trustees. No set of trustees wants to be paralysed by the absence of one of its number – especially in these circumstances where the beneficiaries might rightly have expected certain contingency planning to be in place. The GFSC published some useful [guidance on alternate directors](#) which we covered in [issue 1](#).

2. Every trustee has been faced with that impossible decision to which there is no right answer. As Gordon Dawes explains below, Guernsey courts are continuing to operate virtually and they remain available to help trustees with Beddoes type applications. What is also helpful in Guernsey is that the Court, whilst adhering to the principle that justice should be open to the public, has a much more flexible approach to hearings being conducted in private. Whereas the circumstances in which an English court might be prepared to hear a trust application in private are relatively narrow, Guernsey judges have shown themselves to be understanding in relation to the challenges faced by trustees when dealing with issues affecting large family wealth where the family is famous or children are involved. Accordingly, the fact that a court hearing would be virtual (and therefore not necessarily open to the public) is no absolute bar to getting assistance from the Guernsey Court.

For issues affecting trusts and trustees, please contact [Matt Guthrie](#), [Catherine Moore](#) or your usual Mourant contact.

### **3 Office of Data Protection Authority update**

The Office of the Data Protection Authority (ODPA), which is taking a "realistic and pragmatic" approach to regulatory activities at this time, has published a helpful [Q&A page](#) to address particular issues arising out of the Bailiwick's COVID-19 lockdown.

The ODPA has provided tips to organisations as to how personal data can be better protected when working from home and suggests additional steps which can be taken to mitigate any increased risk of data breach or misuse - for example, undertaking a data protection impact assessment (whether or not one is required legally), ensuring all employees are aware of and can implement the organisation's existing data protection policies, and ensuring all network connections used by employees and clients are secure and up to date.

Further, it has provided clarity about informing of employees of specific COVID-19 cases within the organisation and confirms that when determining how much information to disclose, employers should balance the evolving public health situation and duty of care it owes to employees, with the staff's privacy and dignity so that employers only disclose what is appropriate, necessary and ethical.

Finally the ODPA has issued guidance to healthcare organisations regarding the use of online video and messaging services to assess and diagnose patients during this time.

### **4 Competition enforcement update**

The Channel Islands Competition and Regulatory Authority (CICRA) has issued a media release ([here](#)) echoing the ODPA's use of the word "pragmatic" to describe its enforcement approach during the coronavirus pandemic. CICRA expects industry to take decisions that support critical services, vulnerable people and those who are relying on communications services, and it will support those decisions where they are in the interests of consumers and businesses.

Generally, CICRA says it will be more flexible in its approach and sensitive to the demands placed on businesses. Parties directly affected by changes to its approach, for example, if consultations are suspended or deadlines extended, will be contacted and informed. Otherwise it is "business as usual" with regards to CICRA merger filings and investigations/litigation. CICRA will continue to accept electronic submissions and carry out meetings or hearings albeit via telephone/video conference.

### **5 GFSC Handbook**

On 17 April, the GFSC issued a consultation on changes proposed to the rules and guidance contained in the Handbook to take into account the Bailiwick of Guernsey's National Risk Assessment. The closing date for responses is 5pm 22 May 2020. Read the '[financial crime handbook consultation](#)' for full information.

The GFSC has published updated operational guidance and amendments in relation to deadlines and timeframes in the Handbook to reflect current restrictions imposed as a result of COVID-19. These changes include a four-month extension to the deadline for Board approval of AML and CFT business risk assessments and revised policies and procedures to 30 September 2020. View the ['handbook on countering financial crime and terrorist financing'](#) for more information.

The GFSC has centralised all of its news updates relating to the COVID-19 pandemic since 6 March [here](#).

## **6 Considerations for holding annual general meetings (AGMs) and board meetings during Covid-19**

Shareholders and directors are having to adapt to unprecedented challenges in the practicalities of holding their meetings. While technology is providing easy, cost and time efficient options, shareholders and directors should remind themselves of their legal responsibilities and obligations, and in the case of directors, their fiduciary duties and how to maintain good governance.

Our update on ['practical tips on holding board and shareholder meetings during the pandemic restrictions'](#) addresses some solutions for shareholders due to hold their statutory AGMs during the restrictions faced by COVID-19, practical tips for directors holding virtual board meetings, ensuring decision making capabilities are not disrupted by incapacity and how to practice good governance at this time.

## **7 The International Stock Exchange Authority Limited**

The International Stock Exchange (TISEA) has confirmed that it recognises the unprecedented circumstances faced by debt and equity issuers and is willing to provide flexibility and support to current and prospective issuers. Whilst TISEA expects issuers to meet their continuing obligations, including all of their filing and reporting obligations, if there are circumstances that prevent an issuer from satisfying a continuing obligation, the issuer should contact TISEA (and their listing sponsor / agent) as soon as possible to discuss the possibility of a temporary deviation from the [Listing Rules](#). Issuers should note that a breach of the Listing Rules may lead to enforcement action and persistent breaches may lead to administrative fees, suspension or ultimately the delisting of the issuer's securities.

Further guidance from TISEA, including on continuing obligations and submission of signed documents, can be found in TISEA's Member Notices (which are emailed to members). TISEA's contact details and further news updates can be found on its [website](#).

## **8 Population management update**

Given the current restrictions on travel, Population Management has introduced temporary measures to provide flexibility during this time. Read the States of Guernsey ['Guidance for individuals and employers with employment permits'](#) for further detail.

1. Should employers find themselves in the position where they need to make redundancies or reduce the hours of those on employment permits (short, medium and long), this will not invalidate the employee's permit. The Civil Contingencies Authority has passed regulations to allow those who find themselves in changed situations to remain in Guernsey lawfully. Initially this will be for a 30 day period, but this is most likely to be extended. There is no requirement to seek permission from Population Management to gain additional or alternative employment.
2. For those short-term permit holders on the 9/3 regime, there is no requirement to leave the island if your three month break is approaching.

## **9 Assistance for employees and employers**

From Monday 4 May the payroll co-funding scheme is further extended so that:

1. Businesses that see turnover reduce to below 40% of normal levels will be able to apply for up to 100% of minimum wage for employees through the scheme. This upper threshold will be extended to 50% for those businesses most in need and able to demonstrate that support is still necessary.
2. Businesses with turnover in excess of 40% and up to at least 70% of normal levels will continue to be able to apply for up to 80% of minimum wage for employees. Again, this upper threshold will be extended to 80% of normal turnover for those businesses most in need. Businesses that see their turnover improve to above 70% (or 80% in some cases), will continue to be able to receive this support

for two further weeks after turnover reaches that level. These businesses will still need to contribute the remaining 20% to their employees' wages.

3. The scheme, which began on the 16th March is now being extended beyond the original 13 week period, to the 30th June.

The loan guarantee scheme has also been extended to additional sectors such as legal activity, advocates and intellectual property management, as well as head offices and franchise management.

Read the States of Guernsey '[Guidance for financial support for your business](#)' for further detail.

If you have any questions please contact [Rachel Guthrie](#) and [Hana Plsek](#) of our Employment team.

## 10 A virtual Court of Appeal

One of the many emergency regulations referred to in Section 1 was to permit the Guernsey Court of Appeal to sit virtually. The first appeal was heard on 28th April 2020 before James McNeill QC, Sir Michael Birt and Jeremy Storey QC (who had been sworn in by the Full Court that morning, again virtually). This landmark case was an appeal against the States of Guernsey, represented by litigation partner, [Gordon Dawes](#).

The hearing was conducted using video conferencing, coordinated by HM Greffier from the Royal Court. This is just the latest in a series of innovations from the Royal Court to ensure that both contentious business and conveyancing can carry on as normal despite the crisis.

## 11 Other COVID-19 Resources

- 1 Navigating the new normal? A unique new cross-border briefing for businesses  
We were recently invited by Farrer & Co to join them and a network of international firms to produce a briefing summarising what each country has done in response to the COVID-19 pandemic. This includes sections on critical topics including company law, employment law and tax. You'll find the Maurant entries in the BVI, Cayman, Guernsey and Jersey sections [here](#).
- 2 Lex Mundi COVID-19 Global Competition Measures Report  
Providing COVID-19 related antitrust and enforcement updates from more than 70 jurisdictions, this report from Lex Mundi addresses the impact of the virus on merger review timelines, antitrust investigation and litigation, enforcement priorities, competitor collaborations, price gouging, misleading advertising, as well as government initiatives. Maurant provided the Jersey and Guernsey summaries [here](#).
3. Maurant COVID-19 Updates  
Our growing catalogue of advice and responses to COVID-19 is held centrally on our website under [Maurant COVID-19 Updates](#).

## 12 New Ways of Working

Managing a team when you all shared an office was difficult; in the world of Zoom, Webex and MS Teams, it just got harder. For tips on running a group call and keeping everyone engaged, you might like this from the [Harvard Business Review](#).

Our main aim in this newsletter is to share resources that might help you get the answer you need more quickly. In that vein we came across [Crafty Counsel](#) which provides a hub of bite sized, online video content on a variety of legal topics.

## 13 And Finally.....

After so many Zoom calls, we thought you'd like this [clip](#) of what a conference call looks like in real life.

We are always looking for new ideas so if you have anything you want us to consider for the next issue, let us know. GIN is your network and this is your newsletter. Please send suggestions to [Robert Shepherd](#).

## Contacts

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