

# GIN Members' Newsletter - key legal and regulatory issues for businesses arising from COVID-19

ISSUE NO. 1

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An update on the key issues we're currently being asked to advise on and links to further information.  
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## 1 Use of electronic signatures

We are seeing a rapid increase in the use of electronic signatures by individuals and entities to enter into contracts and sign board or shareholder resolutions. This approach is generally permissible under Guernsey law (subject to certain limitations and restrictions). Please refer to our update on '[Overcoming Barriers to Completion of Transactions amidst COVID-19 Challenges](#)' (which addresses electronic signatures on page 2).

## 2 Directors' duties under Guernsey law

As businesses adapt to the logistical challenges it is more important than ever that directors are up to speed on their duties under Guernsey law. Directors should be particularly mindful of their duties if the company is facing cash flow issues or balance sheet concerns. Please see our recently updated guide to '[Directors' Duties under Guernsey Law](#)'.

## 3 Economic substance

The latest guidance issued by the [Guernsey International Business Association](#) provides timely clarification on how 'in-scope' entities may comply with their economic substance requirements.

Guernsey's Revenue Service has indicated that it will adopt a similar and pragmatic approach to its Jersey counterparts, i.e. companies that have to make adjustments to their normal operating practices to compensate for COVID-19, to the extent they are required to do so to mitigate the threats from the outbreak, will not be considered as failing the economic substance test.

The guidance advises companies in-scope of economic substance to 'maintain and retain relevant records that show what their policy was in respect of restrictions on travel for the company officers and the period of time for which that policy was in place'. It also acts as a reminder that a virtual meeting where there is a quorum of directors physically present in Guernsey, would already count towards demonstrating that board meetings are held in the Island. The guidance suggests that companies consider the ability to appoint alternate directors on Island who can attend meetings in Guernsey and thereby address any short-term practical difficulties arising from COVID-19 (note that any such appointment would however require the prior approval of the GFSC).

## 4 ICSA Guidance on holding virtual board meetings

The Chartered Governance Institute (ICSA) has recently issued [guidance about virtual board meetings](#). Decision makers must continue not just to meet frequently to discuss any issues that the business faces, but also to properly minute their decisions. See our recent update and advice on '[ICSA Guidance on holding virtual board meetings](#)'.

## 5 Appointment of alternate directors

Understanding that there may be a need to appoint alternate directors to licensees at short notice, the GFSC advises any proposed alternate to complete and submit the Online Appointment form as normal and to email the GFSC advising of the submission. If the proposed alternate is already known to the GFSC, for example as a director of the licensee's designated administrator (or insurance manager), the GFSC will expedite the application. View the section of the GFSC article on '[Simplified Procedure for filing of PQs for Alternate Directors](#)'.

## 6 Regulatory returns

The submission of audited regulatory returns with the GFSC has been postponed until the end of October 2020 (at the earliest). In the meantime, regulatory returns can be submitted in unaudited form, without special concession. The deadline for submission of unaudited returns has been extended by one month to the original deadline. View the GFSC news, '[Commission allows more time for Firms to complete Key Financial Returns](#)', including the list of regulatory returns concerned.

## 7 ID verification via video conference

The GFSC has also provided guidance to businesses, '[Can video calling be used to verify the identity of individuals](#)', on how they can verify the identity of an individual through a video call on a smartphone, webcam or similar device to enable the business to comply with the relevant identification verification rules of the Handbook. This guidance is particularly welcome while face-to-face identification through physical meetings or the certification of identification documents remains difficult or, in many cases, impossible.

A firm looking to make use of such means should be satisfied that simultaneous two-way visual and verbal contact can be made and that it is of sufficient good quality to enable the individual's face and identity document (which should be an original and not a copy) to be clearly seen. Checks should also be made by the firm on the authenticity of the identity documents during the call and it is possible for such checks to be automated if the video call or other available software allows.

With the Handbook's record keeping requirements in mind, it is important to record the time and date of the video call, the individual's address, and how the identity verification was achieved and by whom. An electronic copy of the identification document must also be retained. Firms should consider the use of good quality screenshots where it would help to meet these requirements.

As with any method used to verify an individual's identity, the approach must be risk based, and the firm must continue to make assessments of the business relationship or occasional transaction, and the validity and veracity of the identification data used, to determine whether video calls could be used to satisfy the Handbook requirements in all the circumstances, and if such use remains relevant and appropriate as the business relationship continues.

## 8 Conducting Civil Litigation during the Pandemic

See our recent update on the status of the '[Guernsey courts and guidance on conducting civil litigation during the pandemic](#)'.

## 9 Assistance for employees and employers

The States of Guernsey have set up a payroll co-funding and grant system to support certain business areas such as hospitality and tourism. The scheme has now been extended to cover those who are self-employed and further business areas, with support being backdated to the beginning of the scheme on 16 March 2020. Under this scheme the States will fund 80% of employee wages based on the minimum wage of £8.50 per hour. This is done on the basis that employers will contribute a minimum of 20% to reach the full minimum wage. However, employers can opt to pay more than the 20% taking into account that some employees will be earning above minimum wage. For further information see The States of Guernsey's '[Business guidance](#)'.

The Employment & Social Security department has also set up a hardship fund to help people of working age who need financial support as a result of the coronavirus (for example, because they have been made redundant or are unable to work due to childcare commitments but do not qualify for unemployment or sickness benefits).

Self-employed people will also now qualify for benefits in some circumstances where they would previously not have done. A further measure is the award of a grant to businesses and the self-employed in certain specified sectors where there are 10 employees or less of a flat sum of £3,000. The States of Guernsey has also finalised a loan guarantee scheme to enable further financial support for Bailiwick businesses.

In respect of lawfully living and working in Guernsey, the Committee for Home Affairs has requested that the Civil Contingencies Authority arrange for the drafting and approval of regulations to enable individuals holding an employment permit to continue to lawfully remain in Guernsey.

We have issued two briefings aimed at employers which can be found in our COVID-19 Hub, '[COVID-19 employment update: week of 23 March 2022](#)' and '[COVID-19: key questions for employers](#)'.

## **10 Data protection**

The Office of the Data Protection Authority is reassuring local organisations that it is taking a realistic and pragmatic approach to its regulatory activities during the Bailiwick's 'lockdown'.

Bailiwick Data Protection Commissioner, Emma Martins, stated: 'These are not normal times and I want to make it clear that we will not take enforcement action against any organisation who is trying to do the right thing. We know that everyone's focus is understandably diverted to dealing with new ways of working and the associated challenges for us all, as employers, employees and citizens. We also understand and are realistic about the impact the current disruption will have on compliance and governance, especially in sectors which are now instrumental in the Bailiwick's response to the unfolding public health situation. Members of the public will also, we hope, understand that organisations may not be able to respond as quickly as usual to requests relating to their personal data. We are part of a community that is pulling together at an extraordinary time and want to ensure we carry out our duties in a responsible and practical manner in the interests of that whole community.' View the full news update [here](#).

## **11 Cyber security**

It is in times of disruption and displacement that we need to be even more on guard to defend ourselves against Cyber criminals. The criminal fraternity are definitely not on hiatus whilst this pandemic affects the world. As ever you should make sure all your staff are aware of the specific threat and have an easy way to report incidents so they can be dealt with in a timely manner. View the GFSC news on Covid-19 scam advice [here](#).

From fake websites to phishing emails we are seeing an increase in Covid-19 and Coronavirus related content being used to try and trick us into downloading software or handing over logon credentials. For example, we are aware of over 5000 web domains which have been specifically setup with Covid-19 or Coronavirus related names. The City of London Police has warned of the growing trend of [Coronavirus-related fraud](#), seeing scams increase by 400% within the space of a month.

Criminals are also using the pandemic to make more attempts to get money out of businesses by using business email compromise (Whaling) and spoofing an employee in order to try and trick someone into releasing funds. If your finance team are working remotely they need to be extra cautious and validate requests carefully.

## **12 The Channel Islands Financial Ombudsman (CIFO)**

CIFO have confirmed that it is business as usual for their staff (albeit from remote working locations) and urge consumers requiring their assistance to email them at [enquiries@ci-fo.org](mailto:enquiries@ci-fo.org). See their update [here](#).

In particular, they have urged consumers who are concerned during this challenging time about their ability to meet payments of any kind to open lines of communication with their service providers as soon as possible in the first instance.

CIFO have shared a banking industry update given by the [Association of Guernsey Banks](#) (together with its Jersey and Isle of Man counterparts) which asks customers to use online or telephone banking for all day to day banking services to allow the banking industry to prioritise those requiring additional assistance and guidance. The update urges customers to be vigilant to protect themselves, their information and their money given the heightened risk described above, with criminals using the pandemic to target fraud and scam attempts at customers. They have advised a 'Stop. Challenge. Protect.' approach to anyone before sharing their information or parting with funds, and to raise any concerns immediately with their bank.

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